



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/07802/2015

THE IMMIGRATION ACTS

Heard at Field House
On 17 February 2016 and 2 August 2018

Decision & Reasons Promulgated
On 24 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE LATTE

Between

MYF
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms H Short, counsel.
For the Respondent: Mr S Kotas, Home Office Presenting Officer (17 February 2016).
Ms A Everett, Home Office Presenting Officer (2 August 2018).

DECISION AND REASONS

An order has been made under Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead to the appellant being identified. Failure to comply with this order could lead to a contempt of court.

1. This is an appeal by the appellant against a decision of the First-tier Tribunal (Judge Feeney) dismissing his appeal against the respondent's decision refusing him leave to remain on asylum and human rights grounds for the reasons set out in the decision letter dated 27 April 2015.

Background

2. The appellant is a citizen of Afghanistan born on 10 February 1994. He claims that he arrived in the UK on 6 July 2009. Subsequently, he applied for asylum. His application was refused but he was granted discretionary leave to remain until 9 August 2011 when he made a further application for leave to remain. That application was refused on 17 November 2011 and his appeal to the First-tier Tribunal was dismissed following a hearing before Judge A M Black on 8 February 2012. A judicial review application was lodged but permission was refused. Further submissions were made in 2013 on asylum and human rights grounds but refused for the reasons set out in the letter of 27 April 2015.
3. The judge summarised the appellant's claim in [22] as follows:

"In summary the appellant claimed that he was born and lived in Laghman in Afghanistan (this is not in dispute). He was an only child and helped his family with agricultural work. In approximately 2008 his father disappeared with Commander Gulbuddin's military and was not seen again. The appellant's mother fears that her husband had been killed. In the summer of 2008 the appellant says his mother was visited by Commander Gulbuddin's men. His mother told him they wanted him to join their group. She became fearful that her son would disappear like his father and so arranged with her brother for the appellant to come to the UK."
4. The judge heard oral evidence from the appellant and has set out in [13] the documents in evidence at the hearing. These included an expert report from Mr Tim Foxley, which had not been available to Judge Black, and the injunction granted by Christopher Clark LJ on 19 August 2015 in HN and others (C2/2015/2582) and it was argued that these new factors amounted to a change of circumstances.

The Findings of the First-tier Tribunal Judge

5. Having considered Mr Foxley's report, the judge found that there was no reason to depart from the decision made by Judge Black on the issue of the appellant's credibility. However, he took the report into account in so far as it concerned the risk to the appellant on return and the viability of internal relocation. It was argued that the appellant would face a real risk of being subject to a serious individual threat to his life or person solely on account of his presence in Afghanistan because of the unstable political, social and economic situation.
6. The judge reviewed the country guidance decisions and also considered the decision of the CJEU in Elgafaji C-465/07. He was not satisfied that the appellant's case related to a country guidance issue dealt with in the cases he had referred to. He said that if the appellant was at risk in Laghman province, he could be expected to relocate to Kabul. The guidance in the country guidance case of AK (article 15(c)) Afghanistan CG [2012] UKUT 00163 had not been expressly superseded or replaced by any later CG determination nor was it inconsistent with any other authority binding on the tribunal [42]. The judge went on to consider article 8 but found that removing the appellant would not be disproportionate to a legitimate aim.

The Grounds of Appeal and Submissions

7. In the grounds of appeal it is argued that the judge was wrong to apply the guidance in AK in the light of the injunction and permission to appeal granted by Christopher Clarke LJ. There was evidence before the tribunal showing a significant deterioration in the security situation in Afghanistan and the judge had failed properly to consider this evidence. It is also argued that the judge was wrong to dismiss the significance of the order granted by Christopher Clarke LJ on the basis that it was an order directing a stay rather than a determination of the issue. It is further argued that the judge was wrong not to depart from the decision of Judge Black that the appellant's father had not been involved with the Hezb-e Islami Gulbuddin (HEI). Her decision was based principally on plausibility whereas the report from Mr Foxley said that it was reasonable to opine that his father's involvement was plausible.

8. Permission to appeal was granted by the First-tier Tribunal for the following reasons:
 - "a. It is arguable that in the consideration of whether to depart from the previous determination of Judge Black (in which the appellant was found not to be credible), the judge paid insufficient regard to the evidence available since the decision of Judge Black, in particular the report of Mr Tim Foxley [30-34].

 - b. It is arguable that in regard to sufficiency of protection and internal relocation, in following established case law (in particular, AK), the judge paid insufficient regard to the background country information (that arguably shows a deterioration in the security situation in Afghanistan since AK) and the nature of the order of LJ Clarke [35-46].

 - c. Comments made by the Tribunal in TG and others (Afghan Sikhs persecuted) Afghanistan [2015] UKUT 00595 (that is not referred to in the judge's decision) concerning the position of the Afghan government on returnees and internal relocation may also be instructive."

9. Ms Short submitted that the judge had erred by relying on the country guidance case of AK without giving adequate consideration to the considerable body of new evidence since that decision was made. She referred in particular to the evidence identified in the appellant's skeleton argument before the First-tier Tribunal at [25], the UNHCR eligibility guidelines of 17 December 2013 and the OGN, June 2012. At [42] the judge explained why he was following the current country guidance and in [43] why he did not regard the order made in the Court of Appeal in HN and others as superseding that guidance but the fact remained that he did not address the considerable body of evidence about the claimed deteriorating situation in Afghanistan which was sufficient to persuade the Court of Appeal to grant a general stay on removal to those not habitually resident in three named provinces.

10. Ms Short further submitted that the judge should have considered the comments made in the country guidance case of TG and others and finally that he had erred in treating the decision of Judge Black as the starting point in the light of the evidence from Mr Foxley on the plausibility of the involvement of the appellant's father with the HEI.

11. Mr Kotas submitted that the judge was right to take Judge Black's decision as his starting point in accordance with the guidelines in Devaseelan [2002] UKIAT 00702 and there was nothing perverse in the reasons he gave in [34] for not departing from it. It was for the judge to decide what weight to give to the evidence. There was no reason to believe the judge had not considered all the evidence and it would be unrealistic to expect him to deal with all the documents produced in evidence. There was no sufficiently cogent evidence to justify him not following the country guidance as at the date of hearing.

Assessment of Whether there is an Error of Law

12. The issue for me at this stage of the hearing is whether the First-tier Tribunal erred in law such that its decision should be set aside. I shall deal firstly with the argument that the judge was wrong to follow the current country guidance without giving sufficient regard to the further evidence about the claimed deterioration of the situation in Afghanistan and Kabul. As set out in the Senior President's Practice Statement, a country guidance case is authoritative in any subsequent appeal so far as that appeal relates to the country guidance issue in question and depends upon the same or similar evidence. In SG (Iraq) [2012] EWCA Civ 940, the Court of Appeal, having considered the purpose of country guidance determinations, said that decision makers and tribunal judges were required to take them into account and to follow them unless there were strong grounds supported by cogent evidence to justify their not doing so [47].
13. Judges should therefore only depart from country guidance cases when there are cogent reasons for doing so. However, the more time that passes after the issue of a country guidance decision, the more likely it is that there may need to be a consideration of how subsequent events have affected the conclusions reached and the guidance given in that decision. AK was issued in 2012 and the situation in Afghanistan has been volatile. The tribunal in AK commented on the possibility of the situation there deteriorating once the Allied forces had left and at [248] said that while the guidance given would continue to have validity for the immediate future there would be a need to keep the situation in the country under careful review over the next few years.
14. In the present appeal a substantial body of evidence was produced, identified in the bundle at tabs [18-29]. This further evidence arguably at least shows a significant deterioration in the security situation and should have been taken into account by the judge when considering its impact on the guidance in AK. Alternatively, the judge needed to give reasons why this further evidence did not affect that guidance. The judge was right to comment that the grant of a stay by the Court of Appeal did not in itself supersede the country guidance. However, the real issue is what weight if any should have been given to the evidence about events since the guidance in AK.
15. For these reasons I am satisfied that the judge erred in law such that the decision should be set aside. If grounds (a) and (c) in the grant of permission stood by themselves I doubt whether they would amount to errors of law but taken with ground

(b), they strengthen that ground and confirm that this is a proper case in which to set aside the decision.

Directions

16. At the hearing I was told that HN and others had been heard in the Court of Appeal on 14 January 2016 and judgment had been reserved. The outcome in that appeal was likely to have a material bearing on the re-making of the decision in this appeal. Accordingly, I was satisfied that the proper course was for this appeal to be relisted for a directions hearing on the first available date after the judgment in HN was issued. The judgment in HN was given on 3 March 2016 ([2016] EWCA Civ 123). The appeal by the appellants was dismissed. In the event, neither party has sought to argue that this judgment has any bearing on this appeal.
17. However, following the hearing the appeal was relisted for further directions to consider whether it was suitable to proceed as a country guidance case. On 27 February 2017 it was decided that it was not so suitable in the absence of a clear finding on whether the appellant would be at risk in his home area. It was directed that the appeal should be determined after the decision in the country guidance appeal in AS, subsequently reported as AS (Safety of Kabul) Afghanistan [2018] UKUT 118. On 10 April 2018 further directions were issued identifying the issues in this appeal as whether the appellant was at risk on return to his home province and if established, whether he could reasonably be expected to relocate to Kabul and secondly, his article 8 claim based on length of residence in the UK including his mental health. The appellant was given permission to file further evidence regarding his case if returned to Kabul and directed to file a statement of case within 21 days, the respondent to file his statement 21 days thereafter. Directions were also made for the appellant to lodge a full appeal bundle.
18. At the hearing before me the appellant relied on the consolidated bundle of documents indexed and tabulated A1 – G1278. The appellant's statement of case is at A 1-15. No written statement has been filed on behalf of the respondent as apparently there was some misunderstanding about when the appellant's statement was received.
19. At the beginning of the resumed hearing, the issue was raised of whether it was open to the appellant to address issues relating to a risk of persecution on return to Afghanistan in addition to whether he would be at risk of harm from indiscriminate violence in his home area. Although the decision was set aside primarily in relation to whether adequate reasons had been given for the judge's findings on the risk from indiscriminate violence and whether internal relocation was available, the grounds of appeal had also sought to challenge the findings of primary fact arguing that insufficient regard had been paid to the evidence in the report of Mr Foxley about the plausibility of the appellant's evidence. In the light of the passage of time, the further medical evidence and the terms of the most recent directions referring to whether the appellant would be at risk on return to his home province, I am satisfied that the proper course is to consider the risk, if any, arising from both persecution and from indiscriminate violence on return to the appellant's home province.

Further evidence(i) The appellant

20. Before the appellant was called to give oral evidence through a Pashto interpreter, Ms Short indicated that it was her submission that he should be treated as a vulnerable witness in the light of the medical evidence that he was suffering from depression and post-traumatic distress. He might need to take breaks and when being cross-examined, consideration should be given to his mental state.
21. The appellant relied on his three witness statements, dated 28 August 2009 at D241-3, 10 September 2015 at D140-147 and dated 20 June 2018 at C56-60. He confirmed that these statements were true. He had not studied since 2013 as set out in his second statement at [14]. He had not worked. He had no permission to do so.
22. In cross-examination he explained that he had a cousin in this country and had given his name to his solicitors. He did not have much contact with him. His cousin had told him that he had been in contact with his mother and he had asked him about his mother and her contact number, but he had not been given it. It was his view that his cousin had not in fact had any contact with his mother but had told him something simply to make him happy. He had asked him about this, but his cousin avoided answering his questions. He had not had any contact with any other people in Afghanistan, he was only concerned about his mother and he would like to be in touch with her.
23. He did not remember much about his family's political activities; he just remembered living in a village. His father used to work for Gulbuddin and for his party. He went there and would return home. He was working for part of that group. His father did not talk about it and the appellant said that he was 14 when he had last talked to his father. So far as his home province Laghman was concerned, he thought that the Taliban and Daesh were there. There was chaos and no peace or security.
24. If he had the right to work, he would study and do something as he had to work. He wanted to study and learn something and then he would decide what job to do. He said that he did have health problems, but he was not present taking any particular medication. He could not sleep at night and would be awake for 4-5 hours. He was concerned about his mother. He had been in this country for a long time without any status, so he felt a lot of tension. He did not receive counselling. He felt that his condition would not prevent him from doing work.

(ii) The medical evidence

25. The psychological medico-legal report of Dr Murray is at C62-90. The report was prepared on 27 April 2018 and sets out Dr Murray's specialist fields as mental health difficulties following traumatic events, and asylum seeker and refugee mental health. Her qualifications are set out at C66 and the appendix at C84-86 itemises her qualifications, experience and publications. I am satisfied that Dr Murray, who is

certified as an expert witness by Cardiff Law School, is an expert witness qualified to give evidence in her field of expertise.

26. In brief outline it is her opinion that the appellant has met the criteria for a major depressive disorder as set out at [48-55] of her report and of post-traumatic stress disorder (PTSD) for the reasons at [57-63]. She has considered the issue of malingering, feigning or exaggerating symptoms at [67-70] and it is her view that the appellant is unlikely to be malingering, describing him as demonstrating a nuanced knowledge of PTSD systems that he would be unlikely to have known unless he were an expert in PTSD or suffered from them in the manner that he had reported [70].
27. She describes his condition as in the mild-to-moderate range for both disorders [72]. It is her opinion that his condition is unlikely to remit spontaneously while the problems relating to his current separation from his wife, his immigration proceedings and uncertainty about his future continue [76]. When asked what the effect would be on his mental health if he is removed to Afghanistan, she says that in a situation where an individual with mental health problems has minimal social support, there is a high chance that his psychological state will deteriorate and his symptoms increase. She says that whether or not the appellant's fears are accurate or objectively justified, his belief of a life threat is likely to contribute significantly to his mental health problems [86] and he feels he would struggle to live in Afghanistan having been westernised [87]. He will also be separated from his current social support structures, particularly friends who are supporting him, and it is likely that his psychological health will deteriorate in the absence of such support [88].

(iii) The report of Mr T Foxley

28. Mr Foxley's report of 27 October 2015 at D148-184 is updated by the report of 25 June 2018 at C91-135. At [31], Mr Foxley says that the appellant's description of the area from which he claims to originate, his family circumstances and the family dynamic is broadly plausible when considered against the background information. It is his view that whilst detail may be lacking, it is important to bear in mind that a young boy from a poor rural part of Afghanistan with little or no education, and with no experience of travel beyond the immediate area would be unlikely to come up with concise and reliable information relating to locations, names, places and people. He says that the appellant's inability to produce detailed and even consistent information, dates, times and places is very plausible for a youth with his rural and poorly educated background.
29. His report goes on to comment on the risks to the appellant if he were to return to Laghman province. In 2008 the Long War Journal reported significant increases in Taliban activity in the east of Afghanistan including in Laghman province [42]. Reporting from late 2014 highlights the ability of the Taliban to continue to maintain a strong presence within Laghman [45]. His report also refers to significant security problems in and around the province in early 2015 [46]. Fighting between government forces and Taliban has continued into 2018 [51].

30. It is his view that insurgents and local police and security units are still present operating and fighting in the appellant's home area and this includes HEI fighters whose status is unclear. The local community memory of a close-knit rural village and the role of the appellant's father may have played in support of HEI is likely to remain and it is very plausible that local residents, be they informers or opportunists would recognise that the appellant had returned and pass this information on to insurgents operating in the area and that his return might, therefore, put him at risk, even after several years, of being identified and potentially subject to his original problems [52]. He goes on to express the view that compounding the problems he would face is the fact that he might be perceived as tainted through his time in a western country [57].

(iv) Further background evidence

31. Further background evidence is set out in tab G. There is extensive evidence of the problems in Laghman province and in Kabul but I need not set this out any more fully, save to note that I will refer later to the EASO Country Guidance of June 2018 G394-516 and the EASO COI Report of May 2018 G 517-761, as there has been no attempt to challenge the analysis of the current situation in Afghanistan as set out in the recent country guidance in AS (Afghanistan).

Submissions

32. Ms Everett submitted that the proper starting point was the previous decision (B38-55) of Judge Black on 21 February 2012 where the appellant was found not to be a credible witness about events particularly relating to his father and whether he would be at risk on return, his evidence being dismissed as a fabrication. So far as whether his account was plausible, Judge Black accepted that the appellant was giving evidence about events when he was fairly young and lacked maturity. There was now evidence from Mr Foxley who, having looked at his account, considered that it was plausible and could have happened. Ms Everett's submitted that this did not provide an adequate basis for going behind the judge's findings particularly as the appellant's evidence about the lack of contact with his family and the fact that he had no idea what the various different groups stood for in Afghanistan was in itself implausible.
33. It may well be possible, so she argued, that his father had worked for HEI but it was for the tribunal to assess as a matter of credibility whether his account was true and this was not the same as a plausibility assessment, although that factor should properly be taken into account. So far as the appellant's account of having contact with his family was concerned, he said that he had pursued such contact, but it remained a matter of speculation why his cousin would have misled him. His evidence on that subject should be approached with caution. Ms Everett did not seek to go behind the medical evidence but made the point that the appellant was not currently receiving any treatment. He had indicated that his problems would not prevent him from working and many of his difficulties had in all likelihood arisen from his uncertain status.
34. The medical evidence did not support an argument that he would not be able to reintegrate into Afghanistan or find employment. She accepted that there were real

problems in Afghanistan in the appellant's home province and in Kabul but she relied on AS (Afghanistan) in support of her submission that in the appellant's particular circumstances, that did not mean that it would be unduly harsh for him to relocate. Whilst in the UK he been able to pursue some studies and had acquired a private life, but it would not be disproportionate to expect him to rebuild his private life in Afghanistan as he knew the language and was aware of the customs there. It was not as if he would be returning to a strange country.

35. Ms Short submitted that the appellant had left Afghanistan as a child and had now been away for 10 years. He came from Laghman province. If he could not return there, he would be returned to Kabul. She accepted that the starting point for the assessment of credibility was the determination of Judge Black. She argued that in the light of the appellant's age and his current vulnerability, it was understandable that he could not give further details about what happened before he left Afghanistan. When assessing his credibility, his mental health should be taken into account and there had been no medical evidence before Judge Black. Inconsistencies and lack of detail in his evidence were entirely understandable, so she argued, in the light of his age and his medical condition. Further, Judge Black did not have the evidence from Mr Foxley that the appellant's account was plausible.
36. When considering the situation in Laghman, even if the appellant failed to show that he was at real risk of persecution, there was ample evidence to show, so she submitted, that he was at real risk of indiscriminate harm. She relied on the EASO reports of May and June 2018 which confirmed that there was such a risk in Laghman province. The evidence from EASO was consistent with Mr Foxley's evidence. The appellant would be at a high risk of serious harm accentuated by his own circumstances.
37. She submitted that the issue of substance was whether the appellant would be able to relocate to Kabul and whether in his circumstances it would be unduly harsh. She relied on the fact that he was suffering from depression and mental illness and there would be little, if any, treatment for him on return there. He had been away from Afghanistan for about 10 years. He had no family in Kabul and had lost contact with his mother. There was an additional risk of being targeted, so she argued, because he would be seen as westernised. Even if he was not at risk of persecution, he still might well be seen as someone coming from an HEI family. He would be without support in Kabul. When these facts were taken together, it would be unduly harsh for him to return. She made brief submissions in relation to article 8 and para 276ADE of the Rules. Private life was engaged in the light of his nine years' residence in the UK and, looking at the factors as a whole, it would not be proportionate for him to be removed and, in any event, he would have significant difficulties in reintegrating in to life in Afghanistan.

Issues

38. The first issue to consider is whether the appellant would be at real risk of persecution for a Convention reason in his home area, Laghman province. The basis of the appellant's claim has already been summarised in [2]-[4] above. His fear is that he would be recruited by HEI and this is why arrangements were made for him to be

brought to the UK. It is his case that this risk still persists in Afghanistan and if he had to return to his home area, there would be a real risk that as the son of his father who had been in Commander Gulbuddin's military, he would be expected to do the same.

39. This issue was considered at length by Judge Black in her decision. For the reasons which she set out fully in [34] (I)-(XI), she did not find the appellant to be a credible witness about his father's activities with HEI. She referred to numerous inconsistencies in the evidence which she identified. She also said that the appellant had given different accounts prior to and during his asylum interview which were not consistent with his explanation that his earlier evidence was fabricated. The judge went on to consider whether she could make findings that parts of the evidence were truthful, taking into account the fact that the appellant was a minor with little education and that after his journey to the UK there would be inconsistencies in his account. But it was her view that the inconsistencies were significant and went to the core of his claim.
40. She said that, even taking into account his age, lack of education and lack of maturity at the time of his departure from Afghanistan, she found that his accounts were completely unreliable and lacked credibility. She was satisfied that the core of his claim was a fabrication and he had not demonstrated that his father had supported or fought for HEI. It is submitted that I should take a different view of the evidence in the light of firstly, the medical evidence providing confirmation that the appellant is a vulnerable person now suffering from depression and PTSD and secondly, the reports of Mr Foxley confirming that his account is plausible.
41. The medical evidence confirms that the appellant suffers from depression and PTSD and can properly be regarded as vulnerable, but I am not satisfied that provides any adequate explanation for the substantial inconsistencies and fabrications identified by the judge, who took into account the appellant's age, lack of education and maturity at the time of his departure from Afghanistan. The evidence of Mr Foxley comments on the plausibility of the appellant's account. Whilst plausibility is a factor properly to be taken into account, it is simply one factor amongst others. I am satisfied that Judge Black looked at the evidence overall and reached findings properly open to her. I am not satisfied that the further evidence now relied on provides any adequate basis to justify taking a different view of the credibility of the appellant's account of his father's claimed involvement with HEI in Afghanistan. Accordingly, I not satisfied that the appellant is at real risk of persecution for a Convention reason on return to Afghanistan.
42. I now turn to whether the appellant is at risk from indiscriminate violence. Mr Foxley has dealt with the risk of returning to Laghman province in his update report. He has identified the fact that insurgents are still operating there including in all likelihood HEI fighters. The view Mr Foxley takes is confirmed by the recent reports from EASO.
43. At G479 the assessment of the security situation in Laghman province in June 2018 in the EASO Country Guidance Report is as follows:

“Looking at the indicators, it can be concluded that the indiscriminate violence taking place in the province of Laghman reaches such a high level that minimum individual elements are required to show substantial grounds for believing that a civilian, returned to the province, would face a real risk of serious harm in the meaning of article 15(c) QD.”

44. In the EASO COI of May 2018 at G624, it is recorded that military operations are being conducted in the province including airstrikes resulted in the deaths of insurgents, there are also clashes between insurgents and security forces and attacks by insurgent groups have been on the rise in recent years.
45. Taking these factors together, I am satisfied that situation in Laghman province is such that it meets the requirements of article 15(c), certainly in respect of the appellant as he has a number of individual characteristics, and in particular his mental health and general vulnerability, which puts him at greater risk than other members of the population. As I am satisfied that the appellant would be at such risk in his home province, I must consider whether he is able to relocate in Kabul and, if so, whether it would be unduly harsh for him to do so.
46. The issue of the safety of return to Kabul has been considered in the country guidance decision in AS (Afghanistan). The overview of the position in Kabul is set out at [120-171] of the decision and covers issues such as housing and associated amenities, healthcare, employment/socio-economic conditions, returns procedure and available assistance on return on the evidence of the experience of returnees.
47. At [230], the Tribunal said:
- "Our findings above show that it is not generally unsafe or unreasonable for a single healthy man to internally relocate to Kabul. However, we emphasise that a case-by-case consideration whether internal relocation is reasonable for a particular person is required by article 8 of the Qualification Directive and domestic authorities including Januzi and AH (Sudan). When doing so, we consider that there are a number of specific factors which may be relevant to bear in mind. These include, individually as well as cumulatively (including consideration that the strength of one factor may counteract and balance the weakness of another factor):
- (i) age including the age at which a person left Afghanistan,
 - (ii) the nature and quality of connections to Kabul and or Afghanistan,
 - (iii) physical and mental health,
 - (iv) language, education and vocational skills."
48. There has never been a dispute about the appellant's age as he was 15 on arrival in the UK. He has spent some of his formative years in the UK as he is now aged 24. I accept that before he left Afghanistan he was cared for and was part of his family unit and that he has no experience of independent living in Afghanistan nor does he have familiarity or connections with Kabul. Whilst Judge Black did not accept his evidence that he had lost contact with his mother, there is some additional evidence in the letter from the Red Cross of 24 June 2013 (C61) that that organization had been unable to trace his mother. This is not in itself determinative but at least it shows that a further

effort has been made to trace her and on balance I accept that has lost contact with relatives in Afghanistan and that he will not have a family or support network there.

49. So far as his physical and mental health is concerned I accept that the report from Dr Murray that the appellant has depression and PTSD falling within the mild to medium range. He cannot realistically be described as a single, healthy male in the light of the various symptoms described in the medical report. His mental health is attributable not only to his immigration history and the uncertainty of his status in the UK but to other factors including his marriage and divorce whilst in this country. Nonetheless, I accept his mental health is such that there is a substantial likelihood that removing him to Kabul would have a serious impact on his psychological state and his mental health as described by Dr Murray.
50. I also accept the evidence that there our problems with obtaining help and treatment on mental health issues in Kabul in the light of the report at G 1114-6 and the evidence at G1117-1149 setting out the general background to the mental health crisis with recommendations for the future. I also take account of the WHO article at G page 1150-1, noting the stigma and discrimination associated with depression and other mental health problems. The fact that these problems continue is evidenced by the recent 2018 reports at G1194-1199.
51. It is further argued that the appellant has been exposed to and adopted westernised cultural forms, but I am not satisfied that this is a factor of any real substance in the light of the view the tribunal took on that issue in AS (Afghanistan) at [248]. I also attach little weight in this context to the appellant's relative lack of educational and vocational skills.
52. However, in the light of the appellant's precarious mental health and the lack of any family or support network in Kabul family support in Kabul, I am satisfied that in his particular circumstances, it would be unduly harsh for him to be expected to relocate to Kabul.
53. For these reasons I am satisfied that the appellant is at risk of harm contrary to article 15(c) in his home province and that in his circumstances it would be unduly harsh for him to be expected to relocate in Kabul. In the light if these findings I need not deal with the position under article 8 or under para 276 ADE.

Decision

54. The decision of the First-tier Tribunal is set aside. I substitute a decision dismissing the appeal on asylum grounds but allowing it on humanitarian protection grounds.
55. In the light of the issues raised in this appeal and the fact that the previous proceedings were anonymised, I am satisfied that this is a proper case for an order to be made under Rule 14 (1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 and I make an order

prohibiting the disclosure or publication of any matter likely to lead to the appellant being identified.

Signed: HJ E Latter
Deputy Upper Tribunal Judge Latter

Dated: 14 August 2018