Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/05028/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 10th January 2019	**31st January 2019**

Before

UPPER TRIBUNAL JUDGE COKER

Between

WA
(anonymity order made)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr T Hodson, instructed by Elder Rahimi Solicitors
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant in this determination identified as WA. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. On 15th January 2018, the Court of Appeal set aside the decision of the Upper Tribunal promulgated on 23rd February 2016 and remitted the appeal to the Upper Tribunal for a full rehearing on Article 3 and Article 8.

2. WA is an Afghan national born on 20th March 1996. He came to the UK on 7th March 2012 aged 15 and claimed asylum. His asylum claim was rejected but he was granted discretionary leave to remain until 19th September 2013. An application made for further leave to remain was refused and his appeal dismissed by the First-tier Tribunal. Although he was granted permission to appeal to the Upper Tribunal, the Upper Tribunal found that although there were legal errors in the decision of the First-tier Tribunal, none were material. The appeal to the Court of Appeal against that decision was upheld and hence the appeal came before me. The appeal is on his Article 3 and 8 claim only; it is not on asylum grounds. WA continues to have s3C leave to remain in the UK.

3. The undisputed facts:

(a) WA came to the UK as a child;

(b) His parents and siblings died in a road traffic accident;

(c) There was no significant evidence that WA suffered mental ill health until January 2015;

(d) Since January 2015, WA has attempted suicide on four occasions although none were sufficiently close to success to require admission to hospital;

(e) On or around 2nd October 2015 he was assessed under the mental health Act 1983 and received 2 recommendations for admission to hospital but was not admitted because he received an intensive package of outpatient support including daily home visits as an alternative;

(f) He has been diagnosed as suffering from a severe depressive disorder

4. I heard oral evidence from:

- WA's maternal uncle (uncle 1) who is also related to WA through his wife who is his paternal aunt;
- Uncle 2 who is uncle 1's brother; uncle 2's wife is not related to WA save through marriage.
- Ms J Stevenson, cluster lead, Assessment and Treatment Service, Millview Hospital
- Michael Davis, Support Worker, Route One Brighton Housing Trust

5. I did not hear oral evidence from WA – his vulnerability, mental health and the availability of other evidence meant that it was unlikely that anything significant would be achieved hearing from him and there was no need to cause him unnecessary distress.

6. There was documentary medical evidence in the bundle. Ms Isherwood did not challenge the reports (save in so far as they commented upon the

availability of mental health services and support networks in Afghanistan) from Dr Patrick Le Seve (consultant psychiatrist, report dated 5th November 2018 following a review on 2nd November 2018); Dr Alice Brooke (ST4 Higher Specialist Trainee in General Adult Psychiatry, report dated 19th June 2018 following clinic appointment on 18th June 2018); Dr Chockalingam (CT2 to Dr Le Seve, consultant psychiatrist, two reports dated 26th October 2017 and 14th September 2017). There were other earlier reports, none of which were disputed; all of which show that this appellant has been receiving psychiatric services for more than 3 years.

7. The medical evidence from Dr Le Seve confirms:

- He is on daily medication – Pregabalin (300mg twice daily); Risperidone (1mg twice daily); Mirtazipine (45mg at night); Venlafiaxine xl (225mg once daily).
- He continues to present with severe symptoms of PTSD – hypervigilance, heightened startle reflex, paranoia, anxiety, somatic pain, flashbacks, vivid nightmares and an overwhelming belief that unnamed others are looking for him and will eventually find and kill him.
- He does not go out on his own because he is fearful of others and will only reluctantly go out with people he trusts; he cannot use public transport; he easily becomes lost and fails to remember who people are.
- The risk of completed suicide is increasing as the court case gets closer.
- The risk of self-harm or completed suicide on a journey back to Afghanistan is extremely high.
- He benefits from regular medication, social and family support and safe accommodation provided by Brighton Housing Trust.
- He is in need of individual trauma work but given current inability to form memories he needs a period of prolonged stability before this can be considered.
- He is highly dependent upon family members who visit him daily accommodation providers and secondary mental health services. He cannot prepare simple meals.
- He is highly vulnerable to exploitation and self-neglect.

8. Earlier reports are in similar vein. There is reference to WA retaining capacity to make decisions about his ongoing care and treatment and that there remains a risk to self-harm. The identified protective factors are his aunts and uncles, the care team, good engagement and ‘vague hopes for the future’.

9. Ms Stevenson confirmed she had completed the care plan but that there were errors because parts of the plan that were completed when she first had contact with him were not subsequently amended as she continued contact. She confirmed overall that he had daily visits from family members, that they provided cooking, shopping and cleaning tasks for him and that without such intense support he would be at serious risk of suicide. She said she had tried to

engage him in the various refugee services that exist in the Hove and Brighton area but that he was frightened of engaging with people from his own community. She gave examples of him flinching when people walked past if they were out, that he doesn't pray and doesn't go to community centres. When asked about the reference in Dr Brooks report to WA having no suicidal ideation, she said that Dr Brooks had only met him for a relatively short period of time whereas she had had continued contact with him for many months. She said that at the time he may not have had suicidal ideation but that in her view he would attempt suicide if he went back because he has no resources to fall back on. She confirmed that the last attempt was 'maybe 2 years ago'. Ms Isherwood drew to her attention to the observation in the reports that appeared to indicate that his suicidal ideation increased in proximity to court proceedings yet despite there being court proceedings since the last attempt, there had been no further attempts. Ms Stevenson's evidence was that he could not cope at all. When asked whether, if there were facilities and accommodation in Afghanistan, he would be able to cope she said that if family support, psychiatric review, accommodation and medication were there he would be able to cope. But without all of that he would not. In reply to a question about capacity and ability to make decisions she gave her opinion that if a formal capacity assessment was undertaken, he would not have capacity.

10. Mr Davis gave evidence that although the formal arrangement is that he should see WA once a week, with him it is more informal and probably a couple of times a week and some weeks every day; more recently they have been meeting for an hour once a week as well as the more informal meetings. He confirmed that his uncle and/or aunt see WA daily. He said that although he, Mr Davis, did not see them every day, whenever he spoke with WA he would say that his uncle/aunt had brought food/done washing. Mr Davis said that he had never seen WA prepare food for himself, that if he is outside it is because he is waiting for his uncle/aunt and he's always dropped off or collected by his uncle/aunt. There were no exceptions to this.

11. WA had originally lived with his uncle 1 but had been asked to leave November 2014 because his behaviour and nightmares were having an adverse effect on uncle 1's children and family life.

12. The evidence from the two uncles was broadly consistent and consisted of confirmation that the two wives did the shopping, cooking and laundry for WA; took him where he needed to be if his support workers couldn't (including college). Family members phoned him when they were not with him, sometimes several times a day, to remind him to take his medication. There were inconsistencies in the evidence between the two uncles, there was a written statement from only one wife and neither wife gave oral evidence. Ms Isherwood took issue with the reliability of their evidence both because of the inconsistencies (at times neither knew what each other did or which wife did what) and because of the lack of oral evidence from either wife. I place very little weight upon the discrepancies. The picture drawn by these two men was of a nephew, the appellant, for whom their wives did virtually everything, that the two wives organised his support between them and the two uncles were not involved in the day to day arrangements. Ms Isherwood intimated that WA had

been permitted to become so dependant and was not necessarily unable to undertake general day to day tasks. It may be that WA has been "enabled" to become so heavily dependent but the two uncles obvious concern for his well-being and the indications that the appellant was unable to cope with day to day living was consistent with the medical evidence relied upon.

13. Ms Isherwood submitted that Ms Stevenson and Mr Davies were heavily involved with the appellant and their evidence couldn't be seen as objective evidence of his needs and lack of ability to cope. Their evidence was consistent with the medical evidence save that Ms Stevenson took the view that the appellant lacked capacity and either had suicidal ideation a considerable amount of the time or would become so if stressed. I do not accept her evidence that the appellant lacks capacity. If that were the case I would have expected formal assessment to be undertaken given the medication and treatment he is receiving. The medical evidence from the psychiatrists treating him was that he did not lack capacity.

14. In so far as suicidal ideation is concerned I do not accept Ms Stevenson's evidence to that effect. It differs from that of the treating psychiatrist and there is no indication in her evidence that supports that contention. He has had court cases which have not led to suicide attempts although I do of course accept that there have been attempts in the past. Other than these issues, Ms Stevenson's evidence was broadly consistent with that of the treating psychiatrists and the family members.

15. I accept that the appellant does no shopping, cooking, laundry or cleaning for himself. I am not satisfied that he is physically unable to undertake these tasks, but I do accept that his mental health at present prevents him taking personal responsibility for his day-to day life. I also accept what is said by Dr Le Seve that once there is stability in his status then psychotherapy would be of assistance in his recovery. I assume that such would be undertaken with the co-operation of the family and support workers. The indications in the reports are that such treatment, whilst perhaps not resulting in a "cure", would result in him being able to cope on a day to day basis.

16. Ms Isherwood drew attention to a number of matters that indicated that the appellant was not, now, as dependant as claimed. For example, she referred to the GP notes which indicate that he telephones and makes his own appointments, that he attended college for one, possibly two courses, that he has used taxis in the past and has been able to ask strangers for assistance. She drew attention to the evidence that he spends much of his time alone, receives telephone calls to remind him to take his medication and is living in low support accommodation. Although the evidence was that there were no direct blood relatives in Afghanistan, Ms Isherwood submitted that uncle 2's wife (who is not related by blood) does have relatives and there was no reason why they could not be asked for assistance.

17. In terms of the country material and the extract from the report by Dr Giustozzi, Ms Isherwood submitted that there was adequate medication available, albeit not free but the uncles had said they would continue to support him financially, that there was evidence of medical facilities and treatment for

mental health available although not of the standard in the UK. She reiterated that the appellant did not lack capacity; that he was in low support accommodation and that this did not sit well with the family's submission that he was of high dependency. She submitted that the family ties were not such as to amount to family life.

18. Mr Hodson did not concede that the appellant could not meet the high threshold of Article 3 but indicated that his submissions would be primarily focussed on Article 8. On conclusion of Ms Isherwood's submission, given the time, I agreed that Mr Hodson could make his submissions in writing which he did very promptly. Ms Isherwood confirmed having received those written submissions and she had no further comments to make.

Article 3

19. In response to a query raised by the respondent to the Country Policy and Information Team, the respondent submitted that inpatient or outpatient treatment with follow up by a psychologist, CBT, EMDR and narrative exposure therapy was available in Kabul for treatment of PTSD; that long- and short-term clinical treatment for chronic conditions is available, various antipsychotic medicine is available. Mr Hodson did not dispute this or provide contrary evidence.

20. There is no doubt but that the appellant is suffering from serious mental health problems for which he has been receiving consistent treatment in the UK. The medical reports state that he will be at increased suicide risk on notification of and during removal. The respondent is aware of the seriousness of his condition and the treatment he has been receiving. He has access to the various medical reports and the treatment the appellant has been receiving and the medication regime he is prescribed. There is every reason to conclude that if removed, the process of removal will be adequately managed in the light of that information.

21. Uncle 2 has travelled to Afghanistan since he obtained his status in the UK, albeit not recently. There was no evidence that he could not travel with the appellant and make arrangements for adequate psychiatric and psychological treatment to be made available for him on arrival to avoid the possible dire consequences of him arriving unattended in what for the appellant is a frightening and strange place. There was no evidence that he either would not or could not afford to pay for the necessary medication or psychological treatment at least in the short to medium term whilst the appellant adjusts to living in Afghanistan.

22. I do not accept that the reception of the appellant in Afghanistan would be such that the risks to the appellant would meet the very high Article 3 threshold. The evidence before me was such that such risks as there were could be adequately managed, although I accept that it would be very distressing for the appellant and could have consequences such as would lead him to have to be admitted as an inpatient to a psychiatric unit. Nevertheless, the high threshold is not met.

23. I dismiss the appeal on Article 3 grounds.

Paragraph 276ADE/Article 8.

24. Mr Hodson submits that the appellant falls within paragraph 276ADE(1)(vi) namely that there are very significant obstacles to the appellant's integration into Afghanistan.

25. The appellant has a significant subjective fear of individuals from Afghanistan. Although not objectively well founded, it is nevertheless of importance in the assessment of the appellant's possible integration. I accept the evidence that the appellant cannot deal with strangers or situations where he has no previous knowledge, that he has no or very little memory recall and that he is fearful of new situations and people he does not know. I accept that he is fearful of people from his own country, that he feels no affiliation with them and that he genuinely feels that unnamed individuals are "after him". Although he has on occasions managed to ask for directions, get a taxi, phone to make GP appointment and attend college, these have been small activities that in the overall picture of his dependency on family members and his support workers do not indicate any ability to "cope" on his own without considerable and continuous support. Particularly telling was the evidence of Mr Davis and Ms Stevenson of the length of time it took before the appellant would have much to do with Mr Davis and that it is only recently, after several months of engagement that Mr Davis has been able to talk to the appellant for as long as an hour and engage with him on more than merely passing communication.

26. The appellant's private life in the UK is inextricably bound up with his engagement with social and mental health services. Almost his whole life is spent either with those support services or alone in his room. He does not work, read, shop, clean or cook. Some of this may be cultural but his private life is highly dependent on others and without that input there is little doubt but that he would not provide for himself. This is evidence not only from the evidence of his two uncles but the medical reports and the evidence from Ms Stevenson and Mr Davis.

27. The relationship the appellant has with his two uncles and their wives is highly dependent. He is given reminders to take his medication and all his personal life is organised by the two wives. He does virtually nothing for himself.

28. Although submitted to the contrary by Ms Isherwood, I am satisfied that the relationship between the appellant and his family in the UK is that of dependency and closeness; although an adult he is to all intents and purposes a child of those two families.

29. I am satisfied that in Article 8 terms he has established family and private life in the UK, and the removal of him from the UK would interfere with that.

30. The appellant has no siblings, aunts or uncles in Afghanistan. There are no relatives there upon whom he could call for assistance. Ms Isherwood submitted that Uncle 2's wife's family could be either expected to assist or could be asked to assist and that request had not been made. Uncle 2's evidence was

that this was not possible; he appeared quite flabbergasted that her family could be expected to assist a non-blood relative with whom they have had no interaction. He described their employment as that of labourers but more importantly that they had no familial duty to assist, he was not sure to what extent they were aware of the appellant's mental health problems and that assistance would simply not be forthcoming. I accept that evidence. I accept the evidence that Uncle 2's wife gives assistance because she is, through marriage, part of the family. There is no reason why a family who are not related should assist. The appellant had to leave uncle 1's home because of his behaviour. Return of the appellant to the country where he has such significant subjective fear to individuals who have no obligation to assist him would not, I am satisfied result in him receiving any assistance.

31. The current position is therefore that this appellant would be returning to a country where he has a significant subjective fear that unnamed individuals wish to cause him serious harm or even kill him; he has serious mental health problems that require medication to be taken at varying times of the day; he is unable to shop, cook, clean or do laundry for himself; he is fearful of those he does not know to the extent that he does not engage with anyone until he has built up a relationship which can take months; although living semi-independently he requires psychiatric review on a 6 monthly basis.

32. I am satisfied that if he returns to Kabul with his uncle who finds him accommodation and links him up with the psychiatric outpatient services that are available, and remains with him for a period of time, he would, on the departure of his uncle, fall into a situation where he would not engage with the services available, would not shop, cook or clean or do his laundry and would simply remain in his room alone. Although Ms Isherwood is correct that he already spends time alone in his room and sleeping, his day to day care is provided by his family. He does not starve. Without the support and care of his family as it is now provided, there is no evidence – medical or social – that he would begin to take care of himself or be able to integrate to even a limited extent in society. The evidence is that he would not be able to engage with the psychiatric services available in the absence of support from either support workers or his family. It is unreasonable to expect either of his uncles or their wives to return to Kabul with him and remain living there with him – they have families and jobs here in the UK.

33. Ms Isherwood also correctly observed that at present he receives reminders to take his medication from family members by telephone, if they are not present with him. This could continue by telephone when he is in Kabul. But those telephone reminders are part of an overall package of support that is provided by his family – if it were simply a case that he needed a phone call to take his medication then he could clearly return without problem to Kabul. But there is so very much more to the support he requires and currently receives.

34. Reintegration into a country requires engagement to at least a minimal level. The appellant's engagement in the UK cannot be described as minimal; to do so would not be an accurate reflection of his life. Taking out of the equation the engagement he has with psychiatric services his life is focussed on the engagement with his family which enables social interaction, even though not to

a great extent. He may well be able to achieve the level of interaction that he has with Ms Stevenson and Mr Davis with similar individuals in Kabul in time and with considerable assistance. But on return to Kabul, that assistance could not be there other than for a short period of time if his uncle went with him. I am satisfied that he would not have any supportive links in Kabul and that the possibility of achieving such links would be minimal if not non-existent without family support; he would have no meaningful family support other than in the very short term. His integration in Kabul would be non-existent to the extent that he would be unable to feed and clothe himself with any semblance of dignity.

35. I am satisfied that taking all of these factors into account there exist, at present, very significant obstacles to his reintegration into Afghanistan. I am satisfied that this situation will continue for the foreseeable future until he has received the necessary psychiatric treatment such that he is enabled to cope without the intensive input from family members. Of course, he may not live a full and social life, but his reintegration in Kabul may well be achievable after adequate medical intervention.

36. The extent of this situation may, as suggested by Ms Isherwood, have been enabled by his family in the UK, for all the right reasons including the desire not to see him suffer. Nevertheless, the medical evidence is highly suggestive that until he is able to receive adequate treatment that situation will continue. The medical evidence indicates that such treatment is unlikely to be able to start or be successful until his status is more stable. There is no indication in the medical evidence how long such treatment is likely to take or what the likely outcome will be. But it does seem that a positive outcome would be achievable.

37. In conclusion therefore I am satisfied that there currently exist very significant obstacles to the appellant's reintegration into Afghanistan. I am satisfied that the appellant has established private and family life in the UK such that Article 8 is engaged. I am satisfied that the removal of the appellant to Afghanistan would be disproportionate.

38. I allow the appeal on Article 8 grounds.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision

I re-make the decision in the appeal by dismissing the appeal under Article 3 and allowing it under Article 8.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Date 29th January 2019

Upper Tribunal Judge Coker