Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01394/2019

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 6 September 2019	**On 19 September 2019**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

Ibrahim Khalozai
(ANONYMITY NOT DIRECTED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Mohzam (Counsel)
For the Respondent: Mr McVeety (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the claimant's appeal to the Upper Tribunal, brought with the permission of a Judge of the First-tier Tribunal, from a decision of the First-tier Tribunal (the tribunal) which it made on 8 May 2019 (the date of its written reasons) and which it sent to the parties on 14 May 2019 following a hearing of 23 April 2019. In making its decision the tribunal dismissed the claimant's appeal against the Secretary of State's decision of 28 January 2019 refusing to grant him international protection.

2. I have not granted the claimant anonymity. The tribunal did not do so and I was not invited to consider doing so by the claimant's representative. Further, I am unable to

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detect, in the material before me, any proper basis for such a grant. I am sure if there had been such a basis it would have been brought to my attention.

3. Shorn of all but essential detail, the background circumstances are as follows: the claimant is a national of Afghanistan. His birthdate is recorded as being 1 January 2001. That means he is now aged eighteen years. He was at the same age when his appeal was considered by the tribunal. He entered the United Kingdom (UK) on 7 December 2016 having been brought here as part of what is known as the "Calais Camp clearance exercise". Having left Afghanistan, he had travelled through various countries, including Iran, Turkey, Bulgaria, Belgium and France prior to reaching the UK. In pursuing his claim and his subsequent appeal to the tribunal the claimant asserted that he hails from the Petaw village in Kunar Province in Afghanistan where he lived with family. His paternal uncle was a member of the Taliban and wanted the claimant to join too. That led to some conflict between the uncle and the claimant's father and, eventually, to a threat being made by the uncle to take him to the Taliban by force. In response the claimant's father arranged for him to leave Afghanistan and it is that which led to his eventual arrival in the UK. But the Secretary of State refused international protection because she did not believe the account offered by the claimant and, in any event, thought that even if that claim was true he could re-locate to Kabul. The tribunal heard oral evidence from the claimant at a hearing at which both parties were represented.

4. The tribunal, like the Secretary of State, disbelieved the claimant. As to that, it said this:

> "**Findings**
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> 13. In view of the grant of status to the Appellant this appeal is on protection grounds only. I will first consider the factual issues before applying the applicable legal principles to my findings of fact. The Appellant's account is a relatively simple one. In short, his uncle visited the family several times. The uncle raised the prospect of him joining the him [sic] or the Taliban in an earlier visit before stating telling [sic] his father that he would take the Appellant by force on the last occasion. The Appellant then fled. I note that the core of the Appellant's account has been largely consistent. I also note that the account is a relatively simple one that could have been learnt.
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> 14. I do not accept that the Appellant's general account is inconsistent with the country evidence as claimed by the Respondent. I consider that there is evidence of forced recruitment by the Taliban in Afghanistan, see eg the UNCHR [sic] guidelines of 2018 at AB103.
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> 15. I consider the discrepancy raised by the Respondent in relation to his age when his uncle first suggested the Appellant should join him. In his first witness statement, the Appellant stated that his uncle first suggested he should join the Taliban to him when he was aged 11. His uncle returned on two further occasions, and on the last occasion argued with the Appellant's father and threatened to take the Appellant by force. In his interview, the Appellant stated that he was 12-13 when his uncle first spoke to him (AI43). I note the letter from the Appellant's representatives at AB29 dated 16 August 2017 which indicates that the Appellant representatives had sent an earlier email, possibly on 11

August 2017, confirming this error. While I have not seen the email referred to, it does indicate that the Appellant raised this issue before the interview, and indeed before the Appellant had given the Respondent the different age. Taking account of the Appellant's age, I do not consider it appropriate to place significant weight on this issue in the circumstances.

16. One significant inconsistency did arise from the oral evidence. In oral evidence, the Appellant stated that his uncle did not specifically mention the Taliban the first time he asked the Appellant to join him. This contradicts the Appellant's first statement at §10.

17. The Respondent makes a valid point about the uncle's failure to forcefully recruit the Appellant. If the uncle wished to forcefully recruit the Appellant, it is unclear why he did not do so, or at least attempt to do so, there and then on his last visit. All that visit seems to have achieved was to put the Appellant's family on notice of his attentions and allow the Appellant to escape. The hopelessness of this coercive recruitment strategy does raise a question as the plausibility of the account.

18. I now consider the Appellant's evidence concerning his contact with his family. At RB-B27, in a form completed on 5 May 2017, the Appellant stated that he spoke to his mother in December 2016 when she had been at their maternal grandparents' house. The Appellant's maternal uncle had the contact number for Afghanistan. The Appellant's evidence about this at the interview was broadly consistent with this (AI14-18). In oral evidence the Appellant stated that the telephone conversation took place at the maternal uncle's house. This was in Varidan, 30-40 minutes away by foot. This is consistent with the Appellant's account at interview concerning the maternal uncle who lived in Daridam 40 minutes away (AI20-21). Allowing for the differences in spelling of foreign place names, I consider Varidan and Daridam are likely to be the same place. While this was not explored, I consider it likely that the maternal uncle and grandparents are living in the same place. In oral evidence when asked about why he had not been in contact with his family after this, the Appellant stated that his maternal uncle in the UK contacted his own family in Afghanistan but not the Appellant's family. The Appellant stated he had asked his uncle about his family but been told to keep quiet.

19. I find this a problematic aspect of the Appellant's case. One would expect a child fleeing persecution to keep in as much contact with his parents as possible. One would expect his uncle in the UK to facilitate this as much as possible. My understanding of the evidence is that the Appellant's uncle in the UK is in contact with his parents and brother, and the Appellant's grandparents and uncle. In these circumstances, one would either expect the Appellant to be in reasonably regular contact with his parents, or for there to be an adequate explanation as to why this is not the case. Yet the evidence is that he spoke to his mother on a single occasion. I think it highly unlikely that the Appellant's uncle would obstruct the Appellant's efforts to contact his family, or would not tell the Appellant information about his family in Afghanistan. In these circumstances I consider it to be

highly unlikely that the Appellant has only been able to speak to his family once and his evidence to that affect damages his credibility.

20. The Appellant's case has not been helped by the fact that his uncle Luqman in the UK did not attend to give evidence. This is a significant omission in the Appellant's case. His letter of support at AB11 says nothing about any risks faced by the Appellant if he returned, or what has happened to the Appellant's family. It also state 'he has no contact with any of his family what so ever'. This statement is problematic in the light of the fact that the Appellant's evidence is that Luqman had been able to facilitate contact with his mother in December 2016. There is no explanation as to why that is no longer possible. I find this evidence in relation to his contact with his family to be unsatisfactory.

21. A further problem is that if the Appellant's account is true, one would expect the Appellant's family in Afghanistan to have faced problems from the Taliban. One would expect that either the family would have had to relocate, or they would have suffered repercussions for thwarting the efforts to forcibly recruit the Appellant. The fact that the Appellant spoke to his mother at his maternal grandparents'/ uncle's house, which was 40 minutes' walk from the Appellant's home, well over a year after he left Afghanistan, indicates that they have not moved away. Further at the interview the Appellant indicated that his family were earning a living raising goats as before (AI3 and 80). If the family have not had to move, and have not suffered any repercussion, this in turn indicates that the Appellant's father was able to resist his brother's efforts to recruit the Appellant without suffering repercussions from the Taliban. So, I find that the fact that the Appellant was able to speak to his mother in a family member's home in a nearby neighbouring village is inconsistent with his claim to have been subject to efforts by the Taliban to forcibly recruit him. I consider that in relation to the evidence concerning the Appellant's contact with his family, he has failed to discharge the burden upon him under Rule 339L in that the evidence from the Appellant's uncle in the UK was inadequate and the Appellant has failed to adequately explain the issues arising relating to his contact with his family in Afghanistan.

22. I have carefully considered all the evidence in the round in line with the guidance from the case of Ravichandran v Secretary of State for the Home Department [1996] Imm AR 97 and Karanakaran v SSHD 2000 EWCA Civ 11. I have applied the lower standard of proof, with the burden upon the Appellant. I have also taken careful account of the Appellant's age at the time these events are said to have happened and had regard to Immigration Rule 351. I have reached the conclusion that the core of the account is not credible. As noted above, I find that the stated actions of the Appellant's uncle are inconsistent with someone intent on forcibly recruiting the Appellant. I consider that the Appellant's evidence about his contact with his family fundamentally undermines his case. I do not accept the Appellant's evidence that his uncle has refused to tell him about his family or that he has only spoken to his family once. The fact that the Appellant's family were still in his home area over a year after the Appellant left in my view shows that the Appellant has not been subject to forced recruitment, and would not be at risk from the Taliban or anyone else on return to Afghanistan. I find that these issues go to the core of the

> Appellant's claim and cannot be explained by the Appellant's age at the time. I do not accept that the Taliban have attempted to forcibly recruit the Appellant. That was the only basis on which he was said to be at risk in Afghanistan. I find that the Appellant can safely return to live with his family in his home area. I dismiss the appeal on protection grounds".

5. Strictly speaking that was sufficient to dispose of the claimant's appeal but the tribunal, nevertheless, considered what the position might be had it reached the opposite view as to the claimant's credibility. So, to that end, it considered the possibility of internal relocation. As to that, it said this:

> "23. In case I am wrong in my assessment of credibility, and indeed that the Appellant would be at risk of forced recruitment or reprisals from the Taliban in his home area, I go on to consider whether the Appellant could relocate internally. I find that the Appellant is in contact with his family. The Appellant's uncle in the UK is in contact with his parents and brother in Afghanistan and can in any event put the Appellant in touch with his family in Afghanistan. So, the Appellant would be able to return to Afghanistan and live with his family and relocate with them to Kabul. He would have the support of his uncle in the UK. He would also have the support of his maternal uncle and grandparents in Afghanistan. The Appellant is also now an adult. Applying the country guidance of AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC) I find that the Appellant is at most of low level interest to the Taliban and so would not be at risk in Kabul. Whilst the Appellant is only just 18, he would be returning to his own core family, and would have support from the wider family both in Afghanistan and in the UK. I was not provided with any evidence of particular vulnerability. In these circumstances, it is not unreasonable or unduly harsh to require the Appellant to relocate internally to Kabul. For these further reasons, I dismiss the Appellant's appeal on protection grounds".

6. An application for permission to appeal to the Upper Tribunal followed. The written grounds are not separated out but, essentially and in summary it was contended that the tribunal had erred in the following ways: through failing to bear in mind that a variety of means are used by the Taliban to compel families to give up their sons; through wrongly proceeding on the basis that there was evidence from which it could infer that reprisal action had not been taken against the claimant's family; through wrongly concluding that the claimant's contention that he had lost contact with his mother had been damaged by the failure of his UK based uncle to attend before the tribunal as a witness; through failing to consider an explanation as to why the uncle had been unable to attend at the hearing before drawing adverse inferences; and through erring in relying upon what had been said in AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC) when considering internal flight.

7. A grant of permission to appeal to the Upper Tribunal followed. The granting judge relevantly said:

> "2. The grounds assert that the Judge erred in failing to have regard to material evidence; in failing to consider whether there was a good

> reason for the non-attendance of the witness; in requiring corroboration of the Appellant's evidence; and in relying on the guidance in AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC) which was subsequently remitted to the Upper Tribunal by the Court of Appeal in AS (Afghanistan) v SSHD [2019] EWCA Civ 873 specifically for further consideration of the safety of Kabul as a place of relocation. The grounds of appeal disclose an arguable error of law in the light of the Court of Appeal's judgment in AS (Afghanistan) although I note that this would not have been apparent to the judge given that the Court of Appeal handed down its judgment on 24 May 2019".

8. The grant of permission was not stated to be limited so all of the grounds remained in play. But it does seem clear, although not relevant to my own deliberations, that the granting judge had only been persuaded by the ground relating to internal relocation.

9. Permission having been granted the matter was listed for a hearing before the Upper Tribunal (before me) so that consideration could be given as to whether or not the tribunal had erred in law and, if it had, what should flow from that. Representation at that hearing was as stated above and I am grateful to each representative. I have taken into account everything that each of them had to say. I have concluded that the tribunal did not err in law. So, the tribunal's decision shall stand. I set out my reasoning below.

10. I have taken some time to set out the tribunal's reasoning as to credibility because, to my mind, that reasoning is thorough, complete and cogent.

11. As to the existence of evidence said to be contained in the UNHCR Guidelines regarding methods of recruitment, the tribunal was not required to refer to each and every item of evidence which had been placed before it. But the point about forcible recruitment was that, on the claimant's account, that was what the uncle was actually seeking to do whatever other types of recruitment techniques might or might not be used by other Taliban members. The tribunal simply found, as it was entitled to, that the account made little sense in that had the uncle sought to forcibly recruit the claimant as he himself had asserted he had, then he would have simply done so.

12. As to the tribunal's view that if the account were true there would have been evidence that the family had suffered reprisals, that was, again, a conclusion which was open to the tribunal even if the claimant might disagree with it. A point is made in the grounds to the effect that simply because the claimant had spoken to this mother in 2016 (his mother having remained in Afghanistan) that did not shed light on the question of whether reprisal action had in fact been taken against his father. But the tribunal found that, in fact, there had been more family contact than that. That is apparent from what it had to say from paragraph 19 and 20 of its written reasons. The point is that the tribunal was concluding there was some form of ongoing family contact so that, if there had been reprisals, which there would have been had the account been true, that would have become known to the claimant. The tribunal was entitled to take that view.

13. The related assertion that the tribunal had erred in concluding the claimant had not lost contact with his mother after December 2016 is, just that, an assertion. As to the tribunal's treatment of the UK based uncle's evidence and his non-attendance at the

hearing before it, all the tribunal really did, as is apparent from paragraph 20, is have regard to the evidence from him in the form of a letter of support which he had provided. It had not been invited to adjourn so that he could attend at a later date. It was open to it to take the view that the letter, given the conclusions about ongoing family contact, would have said something about any harm which had befallen the claimant's family had such occurred.

14. In fact, although I have sought to specifically address the challenges to the tribunal's adverse credibility findings, I am of the view that none of what is said in that context genuinely goes beyond mere disagreement with the tribunal's findings. Such disagreement, however unfair or unreasonable it might be argued that a tribunal's findings are, is not of itself capable of demonstrating that an error of law has been made.

15. The remaining point relates to internal relocation. I accept, as did Mr McVeety before me, that the landscape has altered somewhat given the Court of Appeal's decision, as referred to in the grounds of permission, to remit the Upper Tribunal's decision in *AS*, cited above. But whether the tribunal's assessment as to internal relocation does or does not remain sound as a result of the Court of Appeal's judgment need not concern me. That is because if the tribunal's decision on credibility and its consequent conclusion that the claimant could safely return to his home area is sound, then that is the end of the matter. If he can return to and will be safe in the home area then, obviously, he does not need to internally relocate.

16. In light of the above, therefore, the claimant's appeal to the Upper Tribunal is dismissed.

Decision

The decision of the First-tier Tribunal did not involve the making of an error of law. Accordingly, that decision shall stand and this appeal to the Upper Tribunal is dismissed.
I make no anonymity direction.

Signed: Dated: 16 September 2019

Upper Tribunal Judge Hemingway

To the Respondent
Fee Award

No fee has been paid. No fee is payable. The appeal has been dismissed. In those circumstances there can be no fee award.

Signed: Dated: 16 September 2019

Upper Tribunal Judge Hemingway