



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/05297/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 21st August 2020**

**Decision & Reasons Promulgated
On 29th September 2020**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

**MR N P
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs F O Mustapha, instructed by Wai Leung Solicitors

For the Respondent: Mr Steven Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, an Afghan national of Pashtun ethnicity from the Kunduz province in Afghanistan, appealed under Section 82 of the Nationality, Immigration and Asylum Act 2002 against the refusal of his protection claim and claim on human rights grounds. On 8th January 2020 an error of law was found in the decision of First-tier Tribunal Judge Devittie's determination promulgated on 12th September 2019. The absence of any conclusions in relation to Article 8 caused the decision to be set aside in that respect only. The decision by the First-tier Tribunal on the international protection grounds was not challenged.

2. The appeal was previously dismissed by First-tier Tribunal Judge R L Walker on 25th September 2018 but that decision was set aside owing to an error of law regarding the approach to internal relocation and paragraph 276ADE(1)(vi) of the Immigration Rules, specifically in relation to the length and quality of time the appellant had spent in the United Kingdom ("the UK"). The matter was thus remitted to the First-tier Tribunal and heard again. This is the second time that the matter has visited the Upper Tribunal and owing to the nature and extent of the findings to be made I directed that the matter be retained in the Upper Tribunal for a resumed hearing on Article 8 only.
3. The appellant, born on 1st January 2000 entered the UK as a minor in 2012. The date of the appellant's birth was found to be 12 years following an age assessment; the appellant believed that he was 10 years old on entry. He claimed asylum on 2nd November 2012 and on 4th January 2013 was granted discretionary leave, as an unaccompanied asylum seeking minor, until 2nd July 2015. Again, on 30th December 2015 he was granted discretionary leave to 30th June 2017. The appellant's application dated 26th June 2017 for further leave was refused on 21st March 2018 following the rejection of his asylum and human rights claim.
4. The appellant had maintained that he was a victim of persecution from the Taliban and that his life was not safe there. His claim to fear the Taliban because of an old feud in which his father had been killed was rejected for failure to provide any evidence. It was noted that his brother fled Afghanistan for the same reason. His brother has now been granted Indefinite Leave to Remain in the UK.
5. In rejecting his claim for asylum the Secretary of State considered the appellant had reached the age of majority, he had the opportunity to take advantage of the assisted voluntary returns programme and that the country guidance and country policy and information showed that he would be returned to Kabul which is the territory currently controlled by the Afghan government.
6. The refusal letter noted the appellant claimed that he had been fully settled in the UK, spent most of his formative years in the UK and had no connection with anyone in Afghanistan. It was considered, however, he was a healthy male of 17 years and 6 months of age who had gained five years of education in the UK and learnt a new language. He had picked up transferrable skills and would be able to use his resourcefulness on return. It was not accepted that the treatment he feared on return amounted to persecution and he had not shown he would encounter problems amounting to a breach of Article 3 should he return. It was accepted he would not have any connections on return to Afghanistan, but it was not accepted he would be vulnerable to exploitation. There was no indication he would face indiscriminate violence or there were any circumstances which engaged Article 15(c) of the Qualification Directive.

7. Turning to consideration of his private life the Secretary of State noted that at the date of his application, he had not lived in the UK for twenty years, and when under the age of 18 had not lived in the UK continuously for seven years. In order to meet the requirements of paragraph 276ADE(1)(v) an applicant must show that they are age between 18 and 24 years and have spent at least half their life living continuously in the UK. The applicant could not show that he had spent half his life living in the UK continuously.
8. It was not accepted in relation to Article 8 that his relationship between him and his former foster parents constituted family life because there were no further elements of dependency beyond normal emotional ties which amounted to real, committed and effective support. He could continue his relationship with them through modern means of communication and it was not accepted that his removal from the UK would breach Article 8 of the European Convention on Human Rights.
9. The fact that he had adopted a westernised lifestyle while residing in the UK was considered within the country information and it was noted at paragraph 2.3.2 of the Country Policy and Information Note on Afghanistan January 2018, that there had been isolated reports of a number of attacks on returnees because of westernisation or at least returnees had spent some time in the west, but the motivations for these attacks were often unclear. Given the handful of reported attacks when compared with a large number of many thousands of returns there appeared to be a very low risk of violent attack or abduction. It was not accepted he would be persecuted on return to Afghanistan on account of being westernised.
10. At the hearing before me Mrs Mustapha produced a skeleton argument and submitted that she relied on Article 3 to further the Article 8 claim because she considered that the appellant would be considered westernised and would experience inhuman treatment on return constituting a very significant obstacle to his return. At this juncture it was noted that the appeal was confined to Article 8.
11. Mrs Mustapha submitted that the appellant satisfied paragraph 276ADE(1)(vi) of the Immigration Rules for the grant of leave to remain in the UK on the basis of his private life as there was real likelihood of the appellant facing very significant obstacle to his integration on his return to Afghanistan.
12. It was submitted that the following factors demonstrated cumulatively or individually that there were very significant obstacles to his reintegration. The appellant left Afghanistan at the age of 12 and as a result had never lived in Afghanistan or as an adult or independently. He had been absent from Afghanistan for nearly eight years and had adapted to the UK way of life and had become quite westernised, having lived here as a pre-adolescent child. He was now only 20. He was a typically British young man whose adult identity had been formed or shaped by an immersion into UK life and culture. His position was distinct from that of an

unaccompanied asylum-seeking child who had spent eight years living with a family member because he had been in local authority care and in the care of the state.

13. His position was also distinct from an adult who had spent eight years living in the UK because these were the appellant's formative years. Although the appellant could in time reacquire his native language skills he was at present fluent in English and had lost ability to communicate properly in Pashtu or Dari.
14. He had lost all touch with his family from the moment he left Afghanistan and all contact with his family in Afghanistan had been severed for more than eight years. He was unaware of the whereabouts of his wider family members in that country and the appellant would face very significant obstacles to his integration. He had no connection with the cultural way of life in the country and had no social or economic skills to sustain him there.
15. The background information indicated that young people without support networks faced particular difficulties over and above those faced by returnees who had never left Afghanistan, such as employment and housing. He had missed out on schooling in the Afghan system, further compromising his ability to find work.
16. The matter should also be considered outside the Immigration Rules and his social, cultural and educational connections and relationships in the UK that he enjoyed with his brother, his ex-foster family and his friends and neighbours should be addressed. He could not take with him the totality of the ties in the UK. It was submitted that in the light of **Huang [2007] UKHL 11** all factors need to be taken into account weighing all relevant considerations there can be no justification said to exist to remove the appellant. The Section 117B factors of the Nationality, Immigration and Asylum Act 2002 should not weigh against him. It was accepted that the appellant was not financially independent as he was being provided with support by the local authority, but he would be able to enter gainful employment once his immigration status was resolved. It was further accepted his private life was developed in the UK at a time when his immigration status was precarious and by reason of Section 117B(5) the Tribunal was required to attach little weight to this but this factor in themselves were not determinative of the outcome of the proportionality assessment **Kaur (children's best interests/public interest interface) UKUT 14**.
17. At the hearing before me Mrs Mustapha submitted a report by Asylos "Afghanistan situation of young male westernised returnees to Kabul 9th January 2018" and she marked up sections for reference.
18. At the hearing the appellant confirmed to Mr Walker that his brother did not attend his first hearing because he could not take the time off work. It was put to him that the DNA test showed that his brother and he were not

full brothers, the appellant did not know why but he knew his brother was not his agent. The appellant confirmed to me in oral evidence that he had no written evidence that he had attempted to contact his family with the Red Cross. He confirmed he lived on his own, he had finished his maths and engineering course at college, but he could not go to university because of his status. His brother was working as a taxi driver.

19. When questioned his brother, Mr H, confirmed that he could send money to Afghanistan for the appellant if required. Under re-examination he confirmed that he had no family left in Afghanistan.
20. Mr Walker submitted that the document Asylos did not paint the conditions for returning westernised Afghans as in a bad light and that they were given assistance when needed such as housing. The appellant had two previous Tribunals. This was not concerned with asylum but with human rights and his appeal should be dismissed.
21. Mrs Mustapha confirmed the appeal was not in relation to the protection claim or Article 3. There were very significant obstacles to his return because he had been westernised. She referred me to the report "After Return" which confirmed that his educational and employment skills would not transfer, and the appellant would have difficulty in finding shelter. He did not and he would not be able to reintegrate. He was a vulnerable young adult with no family connections. He had been here for a long time and should be allowed to remain.

Analysis

22. With respect to Article 8 the Immigration Rules are the starting point as they set out the position of the Secretary of State in relation to a claim on private life grounds under Article 8. The requirements to be met under the Immigration Rules by an applicant for leave to remain on the grounds of private life include as follows:

276ADE (1). The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:

- (i) does not fall for refusal under any of the grounds in Section S-LTR 1.1 to S-LTR 2.2. and S-LTR.3.1. to S-LTR.4.5. in Appendix FM; and*
- (ii) has made a valid application for leave to remain on the grounds of private life in the UK; and*
- (iii) has lived continuously in the UK for at least 20 years (discounting any period of imprisonment); or*
- (iv) is under the age of 18 years and has lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK; or*

(v) is aged 18 years or above and under 25 years and has spent at least half of his life living continuously in the UK (discounting any period of imprisonment); or

(vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK.

23. The findings of First-tier Tribunal Devittie in relation to asylum and humanitarian protection were not set aside and, following **Devaseelan v SSHD** [2002] UKIAT 00702 they are my starting point. I address those findings only as they impinge on my findings in Article 8. Axiomatic to much of the credibility findings were the absence before the First-tier Tribunal of the appellant's brother in the UK. The brother, (I refer to the DNA evidence below), however, did appear to give evidence before the Upper Tribunal, confirmed that he had not previously attended owing to work commitments and confirmed that there was no family in Afghanistan. That has been the appellant's consistent claim. The refusal letter, as I have identified above, acknowledged that the appellant had no connections in Afghanistan. I make this finding afresh. I accept that the appellant will indeed be without connections if returned there. The Secretary of State proposes to return the appellant to Kabul and the appellant has no reason to go to the Kunduz.

24. When considering very significant obstacles the assessment of integration is considered relevant and Sales LJ in **Secretary of State for the Home Department v Kamara** [2016] EWCA Civ 2016 held that integration called for a:

"broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

25. **Kamara** was decided in the context of a deportation and that is not the case here. The appellant has no criminal record, although that is to be expected and not a factor to be identified as showing integration.

26. **Parveen v the Secretary of State for the Home Department** [2018] EWCA Civ 932 confirmed that:

"The task of the Secretary of State, or the Tribunal, in any given case is simply to assess the obstacles of integration relied on, whether characterised as hardship or difficulty or anything else, and to decide whether they regard them as 'very significant'."

27. The appellant entered the UK on 29th September 2012 and almost immediately claimed asylum. He was granted discretionary leave to remain on 4th January 2013 and made his latest application for further leave in July 2017 which was refused. The appellant cannot satisfy the requirements for long residence under Paragraph 276B nor 276ADE(1)(iii) because at the date of application his length of residence was insufficient. He had not lived in the UK for at least seven years at the date of the application further to Paragraph 276ADE (1)(iv) of the Immigration Rules and nor had he spent half his life living in the UK further to 276ADE (1)(v). I turn to a consideration of Paragraph 276ADE(1)(vi).
28. The appellant is now aged 20 and is an adult, although I appreciate there is no bright line in the assessment of his maturity and thus the impact of his age on his ability to return to and integrate in Afghanistan. He has now remained in the UK for almost eight years. Following **Kamara**, I must make a broad evaluative judgment of his integrated links in the UK but also consider the very significant obstacles that would present to him on return to Afghanistan.
29. I accept the evidence he gave in respect of his private life claim and which I detail below. He did not elaborate his claim with medical reports and was candid that he had no health difficulties including mental health difficulties (although he was very distressed at the hearing at the prospect of being removed). Following his claim to be related to his brother he sought DNA documentary evidence which indeed verified they were related.
30. The appellant came to the UK at the age of 12 years according to the age assessment conducted by Social Services. He attended primary school and then attended Howard School before attending MidKent College in Gillingham in Kent where he studied maths and engineering, a course which he has now completed. He told me that he could not attend university because he had no immigration status. The appellant hopes to have a career in civil engineering and he wishes to dedicate his career to the UK.
31. According to his witness statement the appellant did some voluntary work for the British Red Cross in Gillingham but stopped when told that his family in Afghanistan could not be traced because he was too dangerous to undertake tracing. He worked part time for a while in a pizza shop in Kent. He has, however, never had full time employment.
32. He is apparently still in contact with his foster carers whom he visits regularly and they provided a supporting letter for him confirming that he was considered a member of their family and that he had integrated into the UK 'ie cultural/language/lifestyle'. A letter from Mr and Mrs A who had also known him for five years confirmed that he had integrated very well into society. He has many friends within the community and from his previous school.

33. The appellant has consistently stated that he is an orphan and that his parents were killed when he was very young whilst in Afghanistan and that he was cared for by his aunt until he left the country. The Secretary of State in her refusal letter accepted that he had no connection with anyone in Afghanistan and I do not disbelieve that his parents are deceased. On that he has been consistent.
34. His brother, Mr H, does not have the same surname as him and consequently the Home Office initially rejected the assertion that they were brothers. The DNA evidence produced showed they were related but did not show that they were full brothers. The report, however, recorded that it was more difficult to verify siblings without parental testing. At the hearing the brother stated that it was possible they may be half-brothers from a different mother. I do accept from the DNA evidence that the pair are at least half brothers and that the appellant's brother is the only family member whose whereabouts are known, and he is in the UK.
35. The challenge to the decision of the First-tier Tribunal Judge Devittie did not entail a challenge on the asylum grounds and despite the fact that his brother was said to have problems in Afghanistan and now in the UK, I am not in a position to factor in the asylum background of the brother into the appellant's claim in relation to difficulties on return.
36. The appellant does not live with his half-brother and only stayed with his half-brother for a short period since his arrival. His brother now works as a taxi driver and confirmed that he would send money to the appellant if need be. There was however no indication of the amount or the consistency with which those funds would be transmitted. There was no evidence that he had afforded the appellant financial assistance to date.
37. I accept that the appellant has developed a private life in the UK because of his connections with his education and work and his brother and friends. I do not accept that he has a family life with his brother. Family life is a particular concept and not made out here, **Kugathas v Secretary of State for the Home Department** [2003] EWCA Civ 31. Although clearly there is some emotional support, I am not persuaded on the evidence that there is "real" or "committed" or "effective" "support", representing "the irreducible minimum of what family life implies." They live separately and independently, and they are both adults. It was confirmed in the statement that the appellant is financially supported by the state and not at present by his brother. There was no indication that he had hitherto been supported by his brother.
38. Conversely as the appellant has not been supported by a family member his exposure to the culture, which would assist him on return, has been reduced. He has been in local authority care and embedded in UK culture and his position is thus different from that of an unaccompanied minor who has lived with a family member. His foster carer was of Afghan heritage but has obtained British citizenship and he no longer lives with that family. It is a very different matter to live with a family with Afghan

connections in the UK to living with one's own Afghan family in the UK or indeed in order to absorb the culture. As it was not accepted that Mr H was his brother, he was prevented from living with him.

39. The appellant speaks fluent English, spoke Pashtu before his departure at 12 years old, and some Dari. He relates he was at school in Afghanistan for only a couple of years and was raised by his aunt there until the age of 12 and that his Pashtu is now very poor because he has not used it for so long.
40. I accept on the evidence that the appellant has been fully integrated into the UK.
41. His brother stated that they have no family in Afghanistan and believes they may have removed to Pakistan. From the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) 18th August 2020 which documented the ongoing deterioration of the security situation in the region from where the appellant hails, there is no reason to disbelieve that a family from the Kunduz would not have travelled.
42. The two country guidance cases of **AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC)** and **AS (Safety of Kabul) Afghanistan CG [2020] UKUT 00130 (IAC)** considered the reasonableness of return and relocation to Kabul. The Upper Tribunal considered whether it was reasonable to expect a claimant to relocate, or whether it would be unduly harsh to expect him to do so, rather than very significant obstacles but clearly their findings on Kabul have significance for any article 8 findings.
43. **AS (Safety of Kabul) Afghanistan CG [2020]** acknowledged the widespread and persistent conflict related violence in Kabul but stated that the proportion of the population affected by indiscriminate violence was small and not at a level where a returnee, even one with no family or other network and who has no experience of living in Kabul would face a serious and individual threat to their life or person by reason of indiscriminate violence. Safety and security were factors but not determinative. The Tribunal in 2020 reviewed the changing position from the 2018 country guidance with regard the reasonableness of return and, (save for the specific areas of challenge), found the position largely the same. There was no reason to depart from the preserved findings of the panel in 2018 in relation to issues such as accommodation, family networks and employment.
44. With regards westernisation, **AS (Safety of Kabul) Afghanistan CG [2018]** found no real risk of persecution because of westernisation and held at paragraph 187:

"187. We do not find a person on return to Kabul, or more widely to Afghanistan, to be at risk on the basis of 'Westernisation'. There is simply a lack of any cogent or consistent evidence of incidents of such harm on which it could be concluded that there was a real risk to a

person who has spent time in the west being targeted for that reason, either because of appearance, perceived or actual attitudes of such a person. At most, there is some evidence of a possible adverse social impact or suspicion affecting social and family interactions, and evidence from a very small number of fear based on ‘Westernisation’, but we find that the evidence before us falls far short of establishing an objective fear of persecution on this basis for the purposes of the Refugee Convention.”

45. In respect of westernisation **AS (Safety of Kabul) Afghanistan CG [2020]** identified the mere fact of being a returnee did not prevent someone from securing accommodation or work but acknowledged the challenges for returnees and held:

“246. The UNHCR, in the 2019 COI UNHCR Report, cites extensively from a recent German study which found that returnees to Kabul from Germany have faced violence, suspicion and hostility. This study (which we have not seen) was based on only 55 individuals, and therefore caution must be exercised before drawing generalised conclusions from it. We accept that some people in Kabul are suspicious of and hostile towards returnees. However, the evidence before us, considered together and as a whole, points to returnees facing challenging circumstances not because they have returned from the west (risk from westernisation was categorically rejected in the 2018 UT decision (at para. 187) and this finding was not appealed), but primarily because of poverty, lack of accommodation and the absence of employment opportunities, as well as the security situation. The mere fact of being a returnee does not prevent a person accessing accommodation (the evidence is that the “tea house” accommodation is available to all males) or being taken on for day labour work in the informal market. Nor does it prevent a person establishing, or re-establishing, a network, although care would need to be taken to avoid people who are hostile to returnees.”

46. **AS (Safety of Kabul) Afghanistan CG [2020]** having regard to the security and humanitarian situation in Kabul as well as the difficulties faced by the population living there, found it would not in general be unreasonable or unduly harsh for a single adult male in good health to relocate to Kabul even if he does not have any specific connections or support network in Kabul but nonetheless, that the particular circumstances of an individual applicant must be taken into account.
47. **AS (Safety of Kabul) Afghanistan CG [2020]** remarked upon the socio-economic conditions to be experienced with regard work, which is a critical factor to avoid destitution, as follows:

‘229...Even a person who is unable to form any such connections, and who must survive without the benefit of a network, will ordinarily be able to find inexpensive accommodation in a “chai

khana" and (depending on physical abilities, health and other individual characteristics) be able work as a day labourer in the informal labour market in Kabul.

230. A returnee with a support network or specific connections in Kabul may be in a significantly stronger position than others and in some cases the availability of a network will counter a particular vulnerability of an individual on return".

48. That said, secure rather than temporary employment was said to be dependant upon connection and

'Whether a particular returnee would be able to earn sufficient income from this type of work [manual day labourer work] will depend on the individual circumstances. As the available work would mostly be manual in nature, it is necessary to consider whether an individual would be capable (e.g. in the light of his age, health, physical capabilities and other factors) of undertaking such work and would be able to present himself in a way that would attract employers, who frequently will be selecting individuals from a pool of men (some bringing their own tools) who congregate at known meeting points'.

49. There was no indication that this appellant had any physical or mental health difficulties. There was no medical report before me. In that respect he has been candid. I therefore accept, as he stated, that he went to school in Afghanistan for merely a couple of years and that he can only read and write a little in Pashto and Dari. He can speak, read and write in fluently in English because he was at secondary school here throughout. I do not accept that his language is such that he would not be able to speak Pashto at all or for him to exist in Kabul although it will be rusty and his literacy skills may well be more of a problem.

50. Although he has studied maths and engineering he does not have any practical skills to apply when in Kabul. He has hitherto been a student. He has demonstrated an ability to work such as the pizza restaurant, but may not, having been embedded in a very different society for such a length of time at a formative stage in his life, necessarily be able to present himself in a way which would attract employers in a casual day market and in a, no doubt, very competitive environment. I accept there are limited options for employment and the country guidance cases indicted very high unemployment rates. His brother confirmed that he would provide him with money but there was no indication of the size of funds available nor the consistency bearing in mind he is a taxi driver with his own life to support and as the current pandemic circumstances present themselves. Indeed, he has not apparently financially supported his brother to date.

51. I do acknowledge the voluntary assistance scheme could be accessed for an interim period but this is temporary and has been described as

'parachute support'. A person with support network or specific connections in Kabul is more likely to be in an advantageous position. A person without a network may be able to develop one following return there but in view of his immersion in a very different cultural context hitherto and from such a young age, he may well be distinct from the other 'returnees' referred to in **AS (Safety of Kabul) Afghanistan CG [2020]** who are looking for work and this may well I present with significant difficulties for the reasons given above. The employment and accommodation conditions must also, at present, be seen in the light of the Covid 19 global pandemic.

52. **Kamara** refers being able to develop *within a reasonable time a variety of human relationships to give substance to the individual's private or family life.*" Even if he were to be able to enter the job market the question is how long would it take him to secure work and how enduring would that be?
53. Although I reject the concept of very significant obstacles owing to westernisation alone, the Asylos report dated 2017: Afghanistan: Situation of young male 'Westernised' returnees to Kabul (which I accept was considered by **AS (Safety of Kabul) Afghanistan CG [2018]** but worthy of reference here because of the age at which the appellant entered the UK), recorded that those returned to Afghanistan without a support network will struggle to find shelter and employment and access health care. That report identified that Afghanistan is a country of ethnic belongings and tribes who provide support in all areas of life and that,

'it is difficult to rebuild a life for these young male returnees due to the absence of network support in a new place...this is even truer for minors who are still children and need assistance...the consequences are that returnees have no access or a[re] restricted to the job market , the housing market and the marriage market. They are aware of it and that is why they prefer to leave the country again'.

246. The issue of age is relevant to all of the above. **AS (Safety of Kabul) Afghanistan CG [2020]** when considering the reasonableness of internal relocation to Kabul accepted that without a network or connections returnees of any age could expect significant challenges and in relation to age observed as follows:

246. *The Panel in the 2018 UT decision identified that a returnee's age, including the age at which he left Afghanistan, is relevant to reasonableness. We agree. Returnees of any age without a network will face significant challenges establishing themselves in Kabul. A person who left Afghanistan at a young age may, depending on individual circumstances, be less able than someone who spent their formative years in Afghanistan to navigate the challenges of the city by, for example, finding work and accommodation.*

Conclusion on reasonableness

247. Taking a holistic view, and considering all of the circumstances together, we are satisfied that generally it would not be unreasonable for a single healthy man to relocate to Kabul, even if he does not have any family or network in the city and lacks a Tazkera. However, in all cases an individualised case-by-case assessment is required, taking into account an individual's personal circumstances including factors such as his age, health, disability, languages spoken, educational and professional background, length of time outside of Afghanistan, connections to and experience of Kabul and family situation and relationships.

248. The panel in **AS (Afghanistan) 2018** said this:

232. We also consider the age at which a person left Afghanistan to be relevant as to whether this included their formative years. It is reasonable to infer that the older a person is when they leave, the more likely they are to be familiar with, for example, employment opportunities and living independently.

233. Although we find that it is reasonable for a person without a support network or specific connections in Kabul or elsewhere in Afghanistan to internally relocate to Kabul, a person will be in a more advantageous position if they do have such connections depending on where they are, the financial resources of such people and their status/connections. We have in mind that the availability of a support network may counter a particular vulnerability of an individual on return.

54. This appellant was removed from Afghanistan at an unusually young age of 12 years old and when he was pre-adolescent. His only family is with his brother, who has Indefinite Leave to Remain and settled here, and for whom he clearly has affection. His parents are deceased and even though I accept that he does not have an Article 8 protected family life with his brother, he is part of his private life and an element that the appellant will not be able to replicate.

234. The country guidance accepts that there will be difficulties on return for even for those who are young fit males without family. I realise that we are now over three years on from the date of the application when he had only lived in the UK for nearly five years but he has now lived here for 8 years. He has not had any experience of secondary school in Afghanistan which will compromise his ability to engage in critical areas of functioning such as employment and finding accommodation. For someone who has not spent his formative years in Afghanistan, has no family there, and has never been to Kabul I consider there would be very significant obstacles to

his return there and he will struggle to adapt and secure the basic fundamentals such as employment.

55. Contrary to the appellant in **AS (Safety of Kabul) Afghanistan CG [2020]** the appellant has understandably identified beliefs, attitudes or values that would put him outside the norm in Afghanistan. He confirmed in his witness statement that although nominally a Muslim he had changed his belief system comprehensively having lived for so many years in a secular community. I have no reason to discount that as he has spent his entire secondary school years in the UK.
56. The latest Home Office guidance in the Country Policy and Information Note on Afghanistan: Afghans perceived as westernised January 2018, at 5.2 under the rubric 'societal views on returnees and social norms', cited the EASO report and supports the contention that the age at which a person left Afghanistan is relevant. This guidance recorded as follows

'According to IOM's Masood Ahmadi, not respecting community norms may cause problems for a person. He explained that for young people who grew up in Europe, the problems may not come from society itself, but rather from the person's ability to adjust and reintegrate. He gave the view that the length of time a person spends in Europe and the degree to which that person has changed as a result will also affect the individual likelihood of encountering particular difficulties with reintegration in Afghan society. He stated that smooth reintegration into society is linked to the duration the person has spent outside the country and availability of network support. According to Abubakar Siddique, the time a person spends outside Afghanistan in this way has an impact on reintegration: contrasting someone who internalised the experience, with someone who knows and understands the local culture and customs'

57. **AS (Safety of Kabul) Afghanistan CG [2018]** held at paragraph 205 that a single person living alone is outside of the social norms in Afghanistan and relatively uncommon. The Tribunal also held at [202] that there is a significant problem with violent crime in Afghanistan and that someone who has an understanding of the culture and society will be 'more adept at avoiding violence than someone who is ignorant of societal norms'. That, in my view is a significant issue for someone who has not lived in Afghanistan since the age of 12 and has no family there.
58. In these circumstances, I am satisfied that the appellant will be an outsider in the sense that he will not have an understanding of how life is carried on, in order to be able to build relationships and participate in the society within a reasonable period of time and as a result will be unable to navigate the important waypoints in Kabul within the context of the precarious security situation, the socio economic challenges and his unfamiliarity with Kabul and lack of experience in the culture at a critical time.

59. The appellant has attended school here and no doubt made many friends. He would also be able to keep in contact with his relatives and family via modern methods on his return but he would be separated from his only known family member.
60. It is the duration, timing and quality of life that the appellant has spent in the UK and the country to which he must return, which render his profile distinct for the purposes of my assessment. The appellant has spent his pre-adolescent years in the UK and even attended primary school here. He has been in the UK for nearly all of his teen period which is highly formative; very young children are focussed on their parents rather than their peers and are adaptable. The appellant has, according to his witness statement of his foster carers, fully integrated into the UK with friends and has been in local authority care. A letter from MidKent College dated 17th May 2017 confirmed he had enrolled to complete a study programme and he had undertaken work experience in the community and that he was a 'valued member of the group' and had 'many friends throughout the college'.
61. I conclude overall for the reasoning given above that there would be very significant obstacles to the appellant's return to Afghanistan. I find that return to Kunduz would be even more problematical than Kabul.
62. If the matter were to be considered outside the rules and in accordance with the five-stage test in **Razgar v SSHD** [2004] UKHL 27 there is no doubt that the appellant has established a private life in the UK. I am not persuaded however for the reasons given above that there is any family life in the UK. The threshold for the interference is low **AG (Eritrea)** [2007] EWCA Civ 801 and would be reached by his removal. As found above the Secretary of State's own decision is in pursuance of a lawful immigration policy, which is necessary for the rights and freedoms of others albeit I have found find the appellant will encounter very significant obstacles on return. Even if I am wrong about that I employ all the reasoning above in relation to the question of proportionality.
63. I have taken into account Section 117B of the Nationality Immigration and Asylum Act 2002 when assessing the weight to be accorded to the public interest and the proportionality of the Secretary of State's decision as follows:

Section 117B Article 8: public interest considerations applicable in all cases

“(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English -

- (a) *are less of a burden on taxpayers, and*
- (b) *are better able to integrate into society.*

(3) *It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons -*

- (a) *are not a burden on taxpayers, and*
- (b) *are better able to integrate into society.*

(4) *Little weight should be given to -*

- (a) *a private life, or*
- (b) *a relationship formed with a qualifying partner,*

that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) *Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.*

(6) *In the case of a person who is not liable to deportation, the public interest does not require the person's removal where -*

- (a) *the person has a genuine and subsisting parental relationship with a qualifying child, and*
- (b) *it would not be reasonable to expect the child to leave the United Kingdom."*

64. Further to Section 117(3) he is not financially independent at present because he has been engaged in studies. I accept his English is good, but that is a neutral factor in allowing him to remain in the UK.

65. I appreciate that the appellant feels that he is now more British than Afghani. He did spend twelve years of his life in Afghanistan, but this was not in Kabul and not during the critical years leading to adulthood during which he might learn skills to prepare him for work and finding accommodation. Further to Section 117B (5) , little weight should be given to a private life when that has been developed during a precarious leave in the UK. That provision is not, however, a straitjacket. The appellant was granted discretionary leave at a time when he had no control over his journey to the UK and although Section 117 applies to appellants whatever their age, he was a minor during the period of discretionary leave and would not have control over his status when very

young. He did attempt to regularise his stay in the UK prior to attaining his majority. The importance of the formative years is recognised in paragraph 276ADE(1) (v) but even though the appellant is under the age of 24 and he has not spent half his life here either at the date of application or at the date of the hearing his appreciation of his precarious status was perhaps not as acute had he been an adult.

66. The question I must ask in relation to Article 8 is most succinctly encapsulated in **R (Agyarko)** [2017] UKSC 11 is whether there would be unjustifiably harsh consequences on his removal to Afghanistan. For the reasons I have given above and not for any one factor but cumulatively, I find there would.

67. For the reasons given above I find that it would be disproportionate to return the appellant to Afghanistan and I allow the appeal on Article 8 grounds.

Order

Appeal Allowed (European Convention on Human Rights Article 8)

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 their 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 21st September 2020

Upper Tribunal Judge Rimington

TO THE RESPONDENT **FEE AWARD**

As I have allowed the appeal I have considered making a fee award but there appears to have been no fee paid and thus no order is applicable.

Signed Helen Rimington

Date 21st September 2020

Upper Tribunal Judge Rimington