



Upper Tribunal
(Immigration and Asylum Chamber)
PA/10154/2019

Appeal Number:

THE IMMIGRATION ACTS

Heard at Birmingham CJC
On 13th September 2022

Decision & Reasons
Promulgated
On the 29 March 2023

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

BZ
(Anonymity Direction Made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Eaton, counsel instructed by Duncan Lewis
Solicitors

For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

An anonymity direction has previously been made by the Upper Tribunal. As this a protection claim, it is appropriate that a direction is made. Unless and until a Tribunal or Court directs otherwise, BZ is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies amongst others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.

Introduction

1. The appellant is a national of Afghanistan. He claims he was born in 2002. He claims to have arrived in the United Kingdom on 29th June 2015. He made a claim for asylum the following day, when, on his account he was aged 13. An age assessment was completed by Leicestershire County Council on 29th June 2015 and the applicant was assessed to be over 22 years old. A date of birth of 1st January 1993 was ascribed to him, making him 22 years old at the date of his arrival in the UK. The respondent made a decision on 3rd October 2019 to refuse the claim for international protection.
2. The appellant's appeal against that decision was allowed "on asylum and human rights grounds" by First-tier Tribunal Judge Andrew for reasons set out a decision promulgated on 30th March 2020. The respondent was granted permission to appeal by First-tier Tribunal Judge Saffer on 21st December 2020.
3. The decision of First-tier Tribunal Judge Andrew was set aside by Upper Tribunal Judge Jackson for reasons set out in an 'error of law' decision promulgated on 4th August 2021. Upper Tribunal Judge Jackson found there to be material errors of law in the decision of the First-tier Tribunal for all the reasons set out by the respondent in the grounds of appeal. I do not recite the errors of law found in this decision. However it is appropriate to record that at paragraphs [31] and [32] of her decision Upper Tribunal Judge Jackson said:

"31. ... The following findings of fact are preserved for the purposes of re-making the appeal:
 - Paragraph 23 of the First-tier Tribunal's findings on the credibility of the Appellant's claim;
 - Paragraph 24 that there is no Article 15(c) risk on return to the Appellant's home area;

- Paragraph 25 that there is no breach of Article 3 of the European Convention on Human Rights grounds in relation to the Appellant's mental health.

32. In the absence of any further evidence, the primary further findings of fact required are in relation to Article 8 of the European Convention on Human Rights which was not expressly considered at all by the First-tier Tribunal. There may be other discrete matters upon which further findings are required in relation to the Appellant's asylum claim (Mr Azmi noted that there was no express finding as to whether the Appellant's father worked for the authorities or not) and to apply the factual findings to the up to date country guidance; and in relation to the human rights claim but it is anticipated that these will be limited such that it is appropriate to retain the appeal in the Upper Tribunal for remaking."

4. It is against that background that the appeal was listed for a resumed hearing before me. As they are relevant, it is useful at this juncture to record the preserved findings from the decision of First-tier Tribunal Judge Andrew as set out at paragraphs [23] to [25] of her decision. She said:

"23. ... having given the matter anxious scrutiny I do have difficulties with finding the Appellant credible in his claims. I say this for the following reasons:

- a. The Appellant confirmed to me in evidence that he remains in contact with his mother. He speaks to her every ten days or so. She is using a mobile phone. She remains in the family home with the Appellant's siblings. Other than a claim that the Taliban continue to come to the house to look for the Appellant the Appellant makes no claims of any difficulties his mother has had with the Taliban. There are no claims, for example, they are attempting to recruit the Appellant's brother, who he believes to be about 11 or 12. I am satisfied that he is of an age where it is reasonably likely he will be targeted by the Taliban either for recruitment or indoctrination but no claims are made as to this.
- b. Whilst I accept that it is not usual for an asylum seeker to provide corroboration of his account in this case the Appellant has remained in contact with his mother and, had his claim been a credible one, I would have expected to see some form of corroboration from her. Whilst she may not be literate, I have heard from the Appellant that she has two brothers, one of whom assisted the Appellant in coming to the United Kingdom.
- c. I then turn to the two letters sent by the Taliban which have been authenticated by Dr Giustozzi's associate in Afghanistan. He says that he has met with Qari Subhan Mujahid, a Taliban cadre. At paragraph 7 of Dr Giustozzi's report on page 16 of the Supplementary Bundle it is said:

'Qari Subhan confirmed that he knew [MO] and the family of [the appellant], as [M] worked for the 'puppet regime' in

Kabul and 'was involved in many activities against the Islamic Emirate of Afghanistan'. Qari Subhan looked at the three threat letters and confirmed they are all genuine. The Taliban are still looking for [the appellant], his father and other family members to arrest and execute them 'according to shari'a, because they have ignored the repeated calls of the Taliban's Military Commission and refused to surrender.'

- d. However, this cannot be right: in his statement at paragraph 23 the Appellant firstly says: 'My mother informed me in 2016 that my father was taken away by the Taliban.' If this is the case, then there would be no necessity for the Taliban to be looking for his father to arrest and execute him.
- e. The Appellant's statement then goes on: 'I was heartbroken when I found out about the death of my father'. When asked about this, given the information from Mr Subhan that the Taliban were looking for his father, the Appellant was unable to give any explanation. He appeared bemused that there was reference to his father having died in his statement but the Appellant had been asked, at the commencement of his evidence, whether the statement had been read back to him in a language he understood, and that its contents were true. The Appellant confirmed that this was the case. This sentence of the statement is emotive. It is not one which, I am satisfied, would reasonably likely to have appeared without the Appellant knowing about it. I find that this also affects the Appellant's overall credibility.
- f. Even if I am wrong about this there has been no suggestion by the Appellant that the Taliban are looking for him save to recruit him. In this regard I note the Appellant's responses to the questions asked of him in the AIR but in particular that at question 69 when he is asked if he personally experienced any problems because of his father's job and the Appellant responds: 'I didn't have any personal issues, they just wanted us to join them, we didn't like it because my father worked for the gov. (sic) I wanted to be like my father and work for the gov (sic).'The only suggestion the Taliban are looking for the Appellant is in their letters. However, the one which refers to him is dated December 2014. The Appellant claims he did not leave Afghanistan until April 2015. It is simply not credible that the Taliban would have been unable to find the Appellant, who was living at home, between those dates.
- g. It follows from this that Mr Subhan may not be accurate in his claims. I do not know how the question was put to him as there is no explanation from Dr Giustozzi associate and this is not covered in Dr Giustozzi report either. The Appellant's and his father's names may be common in Afghanistan. How did Mr Subhan know that reference was being made to the same persons? There is no explanation contained in Dr Giustozzi's report.
- h. There is nothing in the report to indicate how Mr Subhan knows of the family in the first place, all the report says is that Mr Subhan confirmed he knew the family.
- i. I have to say that there appears to be an amount of cut and paste in Dr Giustozzi's full report. I look at paragraph 17 in which it says: According to his account, made approaches to his brother to recruit

him'. This forms no part of the Appellant's claims. However, the report goes on to confirm that the Taliban do not normally practice forced recruitment with some exceptions note (*sic*) in paragraph 17. There is no evidence that anyone had done anything other than ask the Appellant why he does not attend madrassa. Thus, **I do not find the Appellant would be at real risk because of forced recruitment by the Taliban.**

j. In saying this I accept that the Appellant lives in Baghlan and the evidence is clear that this is a conflict area. His father may well have worked for the authorities. I am satisfied that this may well have been the case as otherwise the Appellant's father would not have gone to the Police. However, the Appellant's claim is that the Taliban wanted to recruit him and for the reasons that I give above I have not found that credible. Further, **I have not found that it is credible the Taliban are looking for the Appellant, also for the reasons that I give above.**

k. As I have indicated the Appellant is clear in his claims: he is afraid of the Taliban because they want to recruit him. (see paragraph 9 of his statement at page 8 of the Appellant's Bundle). He has not said he is afraid of the Taliban because of his father's work. This appears to be an expansion to the Appellant's claim made not by the Appellant but by those he instructs. For the reasons that I give above **I am satisfied that the Appellant would not be forcibly recruited by the Taliban**

24. I accept that the Taliban are strong in Baghlan province from where the Appellant comes. In this regard I have noted paragraph 27 of Dr Giustozzi's report. However, this is where his family home is and where his family remain. Although I am asked to find that there would be an Article 15(c) risk if the Appellant were to return there, I do not find this is the case. It is said that the risk would be because the Appellant is westernised, but I have no evidence before me to show that this would be a heightened risk for the Appellant and AS (safety of Kabul) Afghanistan CG [2018] UKUT 00118 is clear that there is no risk because of Westernisation.

25. I do, however, take account also of the fact that the Appellant has mental health difficulties. I say at the outset I do not find that these are such that there would be a breach of Article 3 per se. The Appellant's mental health difficulties do not cross the high threshold for there to be such a breach. "

The appeal before me

5. The appellant has appealed under s82(1) of the Nationality, Immigration and Asylum Act 2002 against the decision of the respondent to refuse his claim for asylum and humanitarian protection. The appellant claims to be a refugee whose removal from the UK would breach the United Kingdom's obligations under the 1951 Refugee Convention. He also

claims his removal from the UK would be in breach of Article 3 and 8 ECHR.

6. The appellant bears the burden of proving that he falls within the definition of “refugee”. In essence, the appellant has to establish that there are substantial grounds for believing, more simply expressed as a ‘real risk’, that he is outside of his country of nationality, because of a well-founded fear of persecution for a refugee convention reason and he is unable or unwilling, because of such fear, to avail himself of the protection of that country.
7. At the outset of the hearing, the parties agreed that the core of the appellant’s claim is that he remains at risk upon return to Afghanistan from the Taliban. It is common ground the appellant is now an adult. However, Mr Eaton submits that the appellant maintains he was a child when he arrived in the UK, and if that is correct, anything that he said earlier on, should be treated with some caution and should be considered having regard to the appellant’s vulnerability at that time.
8. It is common ground that if the appellant is at risk in his home area, he cannot return to Afghanistan.

The evidence

9. At the outset, Mr Eaton confirmed that the evidence now relied upon by the appellant is set out in the appellant’s consolidated appeal bundle prepared for the hearing before me and comprising of 333 pages. I was provided with a copy of that bundle and a copy of the skeleton argument that had previously been prepared by Abigail Smith and dated 19th May 2022. I have also been provided with a letter from Dr Giustozzi dated 8th September 2022. He was instructed by the appellant’s representatives to “respond to a number of issues raised by the FTT and the Upper Tribunal”.

10. The appellant attended the hearing before me and gave evidence with the assistance of a Pashto interpreter. A full account of the evidence and the submissions made before me is set out in my record of proceedings. In reaching my decision I have fully considered all the evidence that was before the Tribunal, whether it is expressly referred to in this decision or not.

Remaking the decision

11. In reaching my decision I have had the opportunity of hearing the appellant and seeing his evidence tested in cross-examination. Matters of credibility are never easy to determine, particularly, as here, where the appellant's evidence is received through an interpreter. I acknowledge that although there is an age assessment that concluded the appellant is much older than he claims to be, the appellant claims that he was a child when he arrived in the UK. I have also borne in mind the fact that events that may have occurred some time ago, can impact on an individual's ability to recall exact circumstances. I recognise that there may be a tendency by a witness to embellish evidence because although the core of the claim may be true, he/she believes that by embellishing their evidence, the claim becomes stronger. In reaching my decision I have also been careful not to find any part of the account relied upon, to be inherently incredible, because of my own views on what is or is not plausible. I have considered the appellant's claims and the story as a whole, against the available country evidence and other familiar factors, such as consistency with what the appellant has said before.

The appellant's age.

12. The screening interview completed on 30th June 2015 records the appellant's claim that he is 13 years old. That is correct, if, as the appellant claims, he was born on in 2002. In the respondent's bundle there is an extract from an 'Age Assessment' completed by

Leicestershire County Council that is dated 29th June 2015. That extract provides no information as to the basis upon which the age assessing social workers reached their decision that the appellant is assessed to be over the age of 22, and upon which they ascribed 1st January 1993 to be the appellant's date of birth.

13. In her witness statement, the appellant's mother, [BG], states she does not know the date when the appellant was born, but she believes the appellant "is about 20 years old". [BG] states the appellant is a couple of years younger than her eldest daughter who she believes is about 22 years old. No explanation is provided as to the basis upon which [BG] believes her eldest daughter is 22 years old.
14. During his asylum interview conducted on 22nd July 2019, the appellant provided the interviewing officer with a copy of his Tazkira and a translation. A copy is included in the respondent's bundle. The document sets out the registration number and is dated 15th July 2015. It states the appellant's "*age is determined to be 14 years in 1394 (2015)*". In Tanveer Ahmed v SSHD [2002] UKIAT 00439 the IAT confirmed that in asylum and human rights cases it is for an individual to show that a document on which he or she seeks to rely can be relied on and the decision maker should consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round.
15. Dr Giustozzi prepared a report dated 29th December 2018 in which he claims he passed on the document he was provided with to a researcher based in Kabul. The researcher is said to be a journalist who has participated in projects with Dr Giustozzi in the past. The researcher liaised with a gentleman who I refer to as [MWS], an archive manager at the Afghanistan General Population Registration and Statistics Directorate in Kabul on 28th December 2018. [MWS] is said to have viewed the document and checked it against the records. He found a match and confirmed that all the details on the Tazkira are correct.

16. In his witness statement dated 19th May 2022, the appellant claims that when he was growing up he was not told his date of birth or age and they did not celebrate birthdays. The appellant recalls that before his father was attacked, he was taken to a place where his photo was taken and his father told him that he was getting a Taskira. The appellant claims that it was at that time that he was told by his father that he was 13 years old, and that is the age the appellant provided when he claimed asylum in the UK. He states he does not know how the date 2nd February 2002 came to be recorded as his claimed date of birth. I pause to note however that in the letter before action that was sent by the appellant's representatives to Leicestershire County Council on 9th January 2019, they stated "*The claimant is a national of Afghanistan born on 02 February 2002..*".
17. The appellant's account of when the Taskira was obtained is very vague and in any event, it is difficult to reconcile with the document itself. On the appellant's account as set out in his witness statement dated 17th December 2019, his father was ambushed by the Taliban in 2014 and remained in hospital until after the appellant had left Afghanistan. If that is correct, the Taskira would have been issued in 2014. The date recorded on the document however is 24/4/1394 (15/07/2015). The appellant claims the Tazkira in 2016 was posted to him by his cousin in 2016.
18. The appellant arrived in the UK in June 2015 and the document plainly post-dates the appellant's arrival in the UK. The fact that the researcher relied upon by Dr Giustozzi has been able to liaise with [MWS], an archive manager, and a check against the records confirms a match, simply establishes the document is genuine, but not that the information set out as to the appellant's age and date of birth is accurate. In considering the evidence before me, I note in particular;
 - a. The appellant claims in his witness statement dated 17th December 2019 that he only obtained his Tazkira in 2016. He

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explains that he was detained at the time, and that his cousin posted the Tazkira to him. In his oral evidence before me, the appellant said the original of the Tazkira was forwarded to him by his father. At the time, the appellant was being held in a 'Deportation centre', and he received it through his solicitors. Whether the Tazkira was sent to the appellant by his father or cousin, the appellant fails to explain why a Tazkira was obtained in 2014 or indeed 2015.

- b. The Tazkira relied upon by the appellant states the appellant is determined to be 14 years in 2015. The appellant claims his date of birth is 2nd February 2002. If that is correct, as at July 2015 (*when the Tazkira was issued*), the appellant was 13 years old. He would have been 14 in 2016. The Tazkira is therefore at odds with the appellant's claim as to his date of birth.
- c. The background evidence in the respondent's COI response to an information request as to identity documentation dated 10 May 2019 states that the majority of Tazkira's give an estimated age at the time of issue but do not normally give information on date of birth unless the person has a birth certificate. If the applicant does not have information as to the year of birth, the age is determined by specialists in Afghanistan based on physical characteristics and a short interview.
- d. In his letter dated 8th September 2022 Dr Giustozzi states that the reference in the document to the appellant's age being determined to be 14 in 2015 implies the appellant's age was not registered at birth but in 2015 and that the "official in charge visually assessed him as being 14". That is consistent with the background material referred to above that if the applicant does not have information as to the year of birth, the

age is determined by specialists in Afghanistan based on physical characteristics and a short interview.

19. If, as Dr Giustozzi, appears to suggest, the author of the document relied upon the physical characteristics of the appellant, and the official in charge visually assessed the appellant as being 14, it is now well established that the physical appearance and demeanour of an individual is an inherently poor indicator of an individual's age. Here, that task of the official in charge of visually assessing the age of the appellant would have been made even more difficult, if not impossible, by the absence of the appellant when the document was issued. He was clearly not present when the determination of his age as recorded on the document was made. On 15th July 2015, the appellant was in the UK. Neither a visual assessment of the appellant nor a short interview of the appellant was possible.
20. On the very limited evidence before me regarding the appellant's age and date of birth, I am unable to make any informed finding as to the applicant's age and date of birth. However, taking into account the inconsistencies in the evidence and the lack of any explanation as to why and how the document relied upon by the appellant was obtained in Afghanistan, together with the lack of any explanation as to how the author of the document determined the appellant to be 14 years old in 2015, I do not accept the appellant was born on 2nd February 2002. I reject the appellant's claim that he was 13 years old when he arrived in the UK and that he was 14 years old in 2015. In my judgment the appellant's claim to have been a child at that time was a complete fabrication so that the appellant could benefit from being treated as a child.
21. Equally however, the extract from the age assessment said to have been completed by Leicestershire County Council tells me nothing about the basis upon which the age assessing social workers reached their conclusion. I attach little weight to that document too. Although I

cannot reach a definitive finding as to the applicant's age and date of birth, I find on the limited evidence before me that the appellant had attained the age of 18 when he arrived in the UK and was an adult. I find that by the time of the interview conducted on 22nd July 2019, the appellant was very clearly over the age of 18 and it is common ground that the appellant is now an adult.

Findings and conclusions

The international Protection claims.

22. The appellant invites the Tribunal to depart from the adverse findings made by Judge Andrew previously that were preserved by Upper Tribunal Judge Jackson based upon the evidence and reports now available. In particular, I now have before me a witness statement from the appellant's mother dated 19th May 2022 and a letter from Dr Giustozzi. That evidence is said to answer the concerns expressed by Judge Andrew regarding the evidence before her.
23. Having carefully considered all the evidence before me in the round and holistically, I am not satisfied, even to the lower standard, that there is anything in the evidence now before me that undermines the adverse findings previously made by First-tier Tribunal Judge Andrew regarding the core of the appellant's claim.
24. The appellant now relies upon a witness statement made by his mother, [BG], dated 19th May 2022. Her evidence is that her husband worked for the government and although she does not know exactly what he did, she understands it was in "intelligence". She refers to her husband receiving "threatening letters". She understands her husband went to the local elders and then to the authorities but they could not help him. She claims that the Taliban later attacked her husband and his colleagues, and her husband was badly injured. She claims the appellant went to visit his father in hospital and it was decided that it

was not safe for the appellant to remain in Afghanistan in 2015. [BG] claims that after the appellant left Afghanistan, her husband returned home to recover. She claims that in 2016 the Taliban came to the home and took him away. She has had no news about him since that time. She hopes that he is still alive, but is afraid that he has been killed by the Taliban. She claims that after her husband was taken away she went to the elders and asked them to help her find out what had happened to him, but they were unable to do so. She claims the Taliban would come to the home and ask where the appellant is. She claims sometimes it would be members of the Taliban that were not from the area. They would ask about her husband and she would tell them that they should know where he is, as they took him. She states the Taliban have not visited their home recently but she is still afraid of them.

25. There has been no opportunity to test the evidence of [BG] and that affects the weight I attach to it. Equally, although the evidence of [BG] is on the whole, internally consistent with the evidence of the appellant, it is clear that the evidence of [BG] regarding her husband's activities and the interest show by the Taliban in the appellant and his father, is evidence that was available previously or should have been available previously, and was not relied on or brought to the attention of First-tier Tribunal Andrew. I must therefore treat that evidence with the greatest of circumspection.
26. As far as the letters sent by the Taliban are concerned, Dr Giustozzi explains that a Taliban cadre such as Qari Subhan Mujahid would certainly be able to remember the limited number of 'wanted individuals', particularly in a village setting. He states the family believed that the appellant's father was taken away by the Taliban, but at the same time, the appellant's mother also claims that the Taliban kept returning to look for him after his abduction. Dr Giustozzi claims *"This suggests that it was not the Taliban who took the father away, or at least not the official Taliban. Perhaps the father was the victim of some feud."* With due respect to the expertise of Dr Giustozzi, the fact

that he is prepared to hypothesise that the appellant's father could perhaps have been the victim of some feud, when that forms no part of the appellant's case, calls into doubt his ability to be impartial and to assist the Tribunal objectively. His opinion in this respect is no more useful than the evidence of anyone else and is an entirely unjustified assertion based upon nothing more than unsubstantiated speculation.

27. In his witness statement dated 17th December 2019, the appellant claimed his father had problems with the Taliban and that his father used to receive threatening letters from them. He claimed the Taliban attended the home looking for his father and asked for his father. He expressly claimed at paragraph [3] that his father was taken by the Taliban. In his witness statement dated 19th May 2022, the appellant claims at paragraph [10] that since he fled Afghanistan “.. *I know that my father was taken by the Taliban because of his job ...*”. In her witness statement dated 19th May 2022, the appellant's mother expressly states at paragraph [2] that her husband was taken away by the Taliban and she does not know what has happened to him. At paragraph [8] she claims that after the appellant had left Afghanistan and her husband had returned home from hospital, “*the Taliban came to our home and took him away*”. She later claims, at paragraph [10], that the Taliban would come to their home and ask where the appellant is. She goes on to say that they would ask about her husband and she would tell them that they should know where he is, as they took him. In the absence of any opportunity to test her evidence, as I have already set out I treat the evidence of [BG] with some caution and with the greatest of circumspection. Notably however, nowhere in the evidence of the appellant or his mother is there any suggestion whatsoever that there was any sort of feud involving the family or that the appellant's father may have been a victim of some feud.
28. In her preserved findings Judge Andrew set out her reasons for rejecting the core of the appellant's account. In his witness statement dated 19th May 2022, the appellant sets out his comments upon the decision of

Judge Andrew. The appellant claims his mother told him in 2016 that the Taliban had taken his father but they do not know what has happened to him. It may be that the Taliban killed him, but they do not know that for certain. The appellant claims he does not know why his previous witness statement says that he was heartbroken when he found out about the death of his father. He claims there may have been a misunderstanding or misinterpretation when his statement was being prepared.

29. The assessment of an international protection is always a highly fact sensitive task. The findings and conclusions reached by Judge Andrew are neither irrational nor unreasonable, or findings that were wholly unsupported by the evidence before her. There is nothing in the evidence before me that undermines the adverse credibility findings made by Judge Andrew or her finding that the appellant would not be at risk because of forced recruitment by the Taliban. Judge Andrew found it is not credible that the Taliban are looking for the appellant. Having considered the evidence now before me, I am satisfied that what is now said by the appellant, his mother and Dr Giustozzi is in truth, no more than a disagreement with the findings made by Judge Andrew and do not undermine the findings.
30. I accept the submission made by Mr Eaton that Judge Andrew noted, at [23(j)] that the appellant's *"father may well have worked for the authorities...otherwise the Appellant's father would not have gone to the Police"*. I accept that is, to the lower standard, a finding that the appellant's father worked for the 'intelligence department of the government' as the appellant has maintained throughout.
31. Judge Andrew noted, at [23(a)], the absence of any evidence that the appellant's mother has had any difficulties with the Taliban and the absence of any evidence that the appellant's brother has been targeted by the Taliban for recruitment or indoctrination. In his oral evidence before me the appellant confirmed his brother remains in Afghanistan,

but claimed he cannot leave the house and his life is very difficult. In re-examination the appellant confirmed that his brothers are now around the age of 13/14 and 8.

32. There remains no evidence that the Taliban have taken any steps to try and recruit the appellant's brother. The appellant's mother does not claim in her witness statement that she herself has faced any difficulties with the Taliban or they have attempted to recruit the appellant's brother. She refers to the appellant being especially worried about his younger brother, and states she tries to keep him indoors as much as possible for his own safety. The appellant's mother does not claim his brother cannot leave the house. Her evidence is that she tries to keep him indoors as much as possible for his own safety, although that is difficult. The evidence of the appellant's mother as to the problems faced by the family is more reliable. Her evidence is that the Taliban were very strong in the area and since they took over the country, they are now everywhere. She states they have not visited the home recently but she remains afraid of them.

33. In his letter of 8th September 2022, Dr Giustozzi refers to the change in Afghanistan since the Taliban took control and established themselves as the de-facto government. He notes that the Taliban have announced the end of their campaign of assassinations and offered amnesty to all those who collaborated with the previous government and with the western troops, or who had issues with the Taliban. He notes the leadership is not entirely able to restrain its rank-and-file and there have been cases of revenge taking and of harassment of former Afghan servicemen and others. Dr Giustozzi states one of his researchers was able to speak to two Taliban commanders and they explained that the orders of the leadership were clear: no unauthorised violence and respect for the amnesty; only ex-collaborators who had not registered for amnesty were to be detained. Both commanders however confirmed that there was revenge taking going on, by some commanders who had joined the Taliban over the years with the purpose of pursuing personal

revenge. He states that on the whole, the Taliban's amnesty has held and that the terms of the amnesty are that former officials, collaborators of the previous regime and members of the security forces have to surrender to the Taliban and hand over equipment.

34. Dr Giustozzi states there is no confirmed report of systematic Taliban efforts to hunt down former collaborators, except for members of the security forces who did not accept the amnesty. He proceeds upon the premise that the appellant's father is still wanted by the Taliban and the appellant, as the son of former 'collaborator' who did not register for amnesty would therefore be at risk from the Taliban authorities until he applies for amnesty, in which case he will be asked about his father. I attach little weight to the opinions expressed by Dr Giustozzi regarding the risk upon return to the appellant. First, although it is accepted that the appellant's father worked for the security apparatus of the government of Afghanistan, the core of the appellant's account that he is at risk upon return because of his father's activities or that he would be at risk of forced recruitment by the Taliban has been rejected. Second, although Dr Giustozzi claims the appellant could also be at risk from individual members or local groups, especially if it is true that his father was caught in a local feud, that is nothing more than pure speculation on the part of Dr Giustozzi.
35. In his oral evidence before me, Mr Bates referred the appellant to the reference in the report of Dr Giustozzi that there is no confirmed report of systematic Taliban efforts to hunt down former collaborators, except for members of the security forces who did not accept an amnesty. The appellant was asked why he could not ask for an amnesty. The appellant said the Taliban say one thing and do something else. They talk about an amnesty but still commit atrocities against people. He said the Taliban are very cruel and he could not live under their administration.
36. The appellant maintains contact with his mother and siblings. They remain living in their home in the Zadran village, Baghlan. The Taliban

assumed de facto control of the country on 15 August 2021. I note that the respondent's Country Policy and Information note: fear of the Taliban, Afghanistan, April 2022 states, at [2.4.2], that after gaining control, the Taliban announced a 'general amnesty' for anyone who had fought against them. However, there are reports indicating this amnesty and other guidance and policy announced by the Taliban leadership has not been followed across the country and that some Taliban members are acting in revenge, arbitrarily and under their own authority. Reports indicate that the Taliban have conducted door to door house searches to find former security forces personnel or those who have worked for international organisations, and those deemed to be critical of the Taliban regime. That background material is generally consistent with what is said by Dr Giustozzi.

37. I find however that the appellant does not fall into any of the risk categories identified in paragraph [2.4.9] of the respondent's Country Policy and Information note: fear of the Taliban, Afghanistan, April 2022, and that the appellant will not be at risk upon return to his home area in Zadran, a village in the Dahahayeghoori District, in Baghlan. There is a preserved finding that although the Taliban are strong in Baghlan province, there would not be an Article 15(c) risk if the appellant were to return there. The appellant will have the support of his mother on return.

Article 3

38. There is a preserved finding that the Appellant's mental health difficulties do not cross the high threshold for there to be a breach of Article 3.
39. The appellant relies upon the evidence set out in the reports of Dr A Lodhi, a Consultant Psychiatrist and Dr Nuwan Galappathie, a Consultant Forensic Psychiatrist.

40. At paragraph [1.2] Dr Lodhi states the appellant “*has suffered a period of detention and torture under the Afghanistan authorities*”, but that does not form any part of the appellant’s case. Dr Lodhi makes a diagnosis of ‘moderate depression’ with significant anxiety symptoms. The appellant is described as having lost confidence because of his current mental state and uncertain future because of his immigration status. Dr Lodhi makes comments at paragraph [18.1] regarding the ongoing war in Afghanistan. They are matters that are entirely outside the expertise of Dr Lodhi. The report of Dr Lodhi was before Judge Andrew previously.

41. The appellant now also relies upon a report prepared by Dr Nuwan Galappathie. Dr Galappathie examined the appellant on 27th April 2022 by video-call with the assistance of an interpreter. Dr Galappathie notes the appellant described suffering from a number of symptoms consistent with PTSD. He reviewed the appellant’s GP records and sets out a summary of the material entries at paragraphs [41] to [58] of the report. The first reference in the appellant’s GP records relating to the appellant’s mental health follows a visit to the GP on 19th December 2019. The appellant reported cutting his hand with a small knife that he had warmed up. The appellant was prescribed 20mg Citalopran per day. There are various references thereafter to the appellant being seen and complaining of nightmares, anxiety, stress and negative thoughts for which he was prescribed medication and a referral was made for talking therapies. Although the appellant had thoughts of self harm, he did not have any plans to end his life. An entry on 27th February 2020 refers to appellant having “burned his hand about 3 months ago”. That appears to be a reference to the incident recorded on 19th December 2019. It appears that the dose of his antidepressant medication in the form of Citalopram was increased to 40mg in March 2020. In May 2020, the appellant was diagnosed as having a depressive disorder and plans were made for him to continue his prescribed medication and to receive therapy. The last entry referred to by Dr Galappathie is dated 20th May 2022 and refers to a letter from a CBT Therapist at Walsall Talking

Therapies Service. The appellant was assessed as being suitable for commencing talking therapies and plans were made to offer him CBT to assist with anxiety and depression.

42. Dr Galappathie diagnosed the appellant as suffering from a 'single episode depressive disorder, severe, without psychotic symptoms. In his opinion, the appellant is suffering from a severe episode of depression. The appellant is also diagnosed as suffering from Post Traumatic Stress Disorder (PTSD), indicated by his account of experiencing a number of highly traumatic events that would be likely to cause pervasive distress in almost anyone that has experienced them. That included the trauma witnessed by the appellant in Afghanistan, and during his long and traumatic journey to the UK that included being arrested in Hungary and being placed in a refugee camp for 2 weeks in what he described as horrendous conditions. Dr Galappathie expresses the opinion that the appellant requires ongoing treatment of his mental health problems and he will benefit from ongoing follow up by his GP to ensure that his depression is effectively treated. He states the appellant will benefit from continued treatment with antidepressant medication in the form of citalopram 40mg per day and from further psychological therapy to fully address his depression and anxiety.
43. Dr Galappathie refers to the appellant having thoughts about self-harm and suicide. In his opinion, whilst there has been no recent self-harm, the appellant still presents with a potential risk of self-harm and suicide given the high number of risk factors for self-harm and suicide that are present including his diagnosis by way of depression, anxiety, PTSD, past history of reported trauma in Afghanistan, fear of being returned to Afghanistan and likely deterioration in mental health that would occur upon return given his subjective fear of being killed by the Taliban. Dr Galappathie states that in his opinion, the appellant would suffer from a substantial deterioration in mental health if attempts were made to return him to Afghanistan. He is likely to suffer from worsening

depression, anxiety and PTSD if attempts are made to return him with a high risk of self harm and suicide upon return.

44. The appellant has provided letters from 'Walsall Talking Therapies Service' that show the appellant has been sent appointments but there is no further information as to the appellant's attendance, symptoms, or treatment. In his oral evidence before me, the appellant said that his focus at the moment is on his health and he continues to be prescribed Citalopram 40mg to be taken once each day.
45. I have no doubt that the appellant has concerns about returning to Afghanistan but the core of his claim has been rejected. He will not be at risk upon return from the Taliban. I accept the diagnosis made by Dr Galappathie, but I attach little weight to the opinions expressed by him as to the impact the appellant's removal to Afghanistan will have upon his mental health. His opinions fail to have regard to the fact that the core of the appellant's account has been rejected, and more importantly to the support that will be available to the appellant from his family, and in particular his mother.
46. I acknowledge that an Article 3 claim, can in principle also succeed, in a suicide case. It is now well established that what is required is an assessment of the risk at three stages, prior to anticipated removal, during removal, and on arrival.
47. I accept the diagnosis made by Galappathie and I accept that in the appellant's GP records there is a reference to the appellant cutting his hand with a small knife that he had warmed up, on 19th December 2019. That is an isolated incident of self-harm. As I have said, the GP records refer to the appellant having negative thoughts but with no plans to end his life. The appellant is not at risk upon return to Afghanistan for the reasons already set out in this decision and the preserved findings of Judge Andrew. On return to Afghanistan he will, I find, have familial support available to him.

48. I am prepared to accept that the appellant's symptoms and mental health problems are likely to have been directly caused by his past history and the current situation, and that his uncertain immigration status and fear of being returned to Afghanistan are likely to be factors that have caused some deterioration in his mental health. The appellant is prescribed medication and he is aware of the risk to his health and has sought some assistance in the past.
49. I do not consider the medical evidence, taken at its highest, demonstrates a real risk that the appellant would commit suicide in the UK. The appellant has received support and cooperated with the medical authorities in the UK. Any risk upon the appellant learning of any decision to remove him, would be adequately managed in the UK by the relevant authorities. Any risk that manifests itself during removal, is capable of being managed by the respondent and in the knowledge that the appellant will be returning to his home and will have familial support in Afghanistan. I therefore approach my assessment on the basis that it would be possible for the respondent to return the appellant to Afghanistan without him coming to harm, but once there, he would be in the hands of the mental health services in Afghanistan. The risk here, results from a naturally occurring illness. I have found that the appellant has family in Afghanistan, and I am satisfied the appellant would have the support of his family on return and that would provide an extra protective layer such as to prevent him taking his life. On the findings made, the appellant's subjective fear is not objectively well-founded. In his report, Dr Lodhi states he remains in touch with Consultant Psychiatric Colleagues in Pakistan and that the majority of people in Afghanistan make great efforts to take their family members to psychiatrists in Pakistan and also buy their psychiatric medications from Pakistan before returning back to Afghanistan. Although I accept the availability of psychiatric treatment is very limited in Afghanistan, there is no evidence before me upon which I can conclude that any treatment and medication required by the appellant will not be available to him in Afghanistan.

50. In AM (Zimbabwe) v SSHD [2020] UKSC EWCA Civ 64, Lord Wilson noted the ECtHR set out requirements (at paras 186 to 191) for the procedure to be followed in relation to applications under Article 3 to resist return by reference to ill-health. It is for the appellant to adduce evidence capable of demonstrating that there are substantial grounds for believing that, if removed, he would be exposed to a real risk of being subjected to treatment contrary to Article 3. The Supreme Court confirmed that that is a demanding threshold for an applicant. His or her evidence must be capable of demonstrating “substantial” grounds for believing that it is a “very exceptional case” because of a “real” risk of subjection to “inhuman” treatment.
51. In the end having carefully considered all the evidence before me, I am not satisfied that the appellant has established that there are substantial grounds for believing that he would face a real risk of being exposed to either a serious, rapid and irreversible decline in the state of her mental health resulting in intense suffering or the significant reduction in life expectancy as a result of either the absence of treatment or lack of access to such treatment. The ‘suicide risk’ is not in my judgement such that the removal of the appellant to Afghanistan would be in breach of Article 3.
52. There is on the evidence before me, nothing that undermines the preserved finding that the appellant’s mental health difficulties do not cross the high threshold for there to be a breach of Article 3.

Article 8

53. I turn finally to the Article 8 claim made by the appellant. The evidence before me is very limited. In his witness statement dated 19th May 2022, the appellant claims he has lived in the UK nearly all his teenage life and all of his adult life. He states this is his home and where he has grown up. He claims he is very close to [Z] and he has some very good friends in London who have supported him, especially with his mental

health. In cross examination, the appellant confirmed he remains in contact with his mother and that his brothers and sisters continue to live with her. They support themselves from crops grown on their agricultural land. On behalf of the appellant it is submitted that the appellant has established a private life in the UK such that Article 8 is engaged and his removal would amount to a disproportionate interference with his Article 8 rights.

54. For reasons that I have already set out, I reject the appellant's claim that he was 13 years old when he arrived in the UK. I have found the appellant had attained the age of 18 when he arrived in the UK and was an adult. I accept however that the appellant arrived in the United Kingdom in June 2015 and has lived here for several years. I am prepared to accept that over the passage of time, the appellant will have established a private life and Article 8 is engaged. I find that the decision to remove the appellant has consequences of such gravity as to engage the operation of Article 8. I accept that the interference is in accordance with the law, and that the interference is necessary to protect the legitimate aim of immigration control and the economic well-being of the country. The central issue in this appeal is whether the decision to refuse leave to remain is proportionate to the legitimate aim.
55. The ultimate issue is whether a fair balance has been struck between the individual and public interest; GM (Sri Lanka) v Secretary of State for the Home Department [2019] EWCA Civ 1630. Section 117A(2)(a) of the 2002 Act requires me to have regard to the considerations listed in section 117B in considering the public interest question. The public interest question is, in turn, defined in section 117A(3) as being the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2). There is, however, an element of flexibility within this provision. In Rhuppiah v Secretary of State for the Home Department [2018] UKSC 58, at [49], Lord Wilson observed that the provisions of section 117B cannot put decision-

makers in a strait-jacket which constrains them to determine claims under Article 8 inconsistently with the article itself.

56. There is an absence of any credible evidence regarding the private life that has been established by the appellant in the United Kingdom. There is scant evidence before me of the appellant's activities and none of the appellant's associates has provided any evidence to support the appellant's claims. For the reasons I have already set out, there are in my judgment no obstacles to the appellant's integration in Afghanistan where he will have the continued support of his immediate family. I have considered all the evidence before me in the round. I have had due regard to factors that weigh in favour of the appellant including his young age, albeit an adult, and his mental and physical health. I have had regard to the length of his presence in the UK and the relationships that he is likely to have established with others. I have also had regard to all the medical and background evidence before me. I acknowledge the appellant arrived in the UK and has taken steps to regularise his immigration status. I acknowledge the delay that occurred in deciding his claim. S117B(5) of the 2002 Act requires that little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.
57. On the other side of the scales I have had regard to the findings made regarding the international protection claim made by the appellant, the Article 3 claim made by him, and his familial connections to Afghanistan. In the end, standing back, although I accept the removal of the appellant to Afghanistan will interfere with the appellant's private life, even giving due weight to the factors that weigh in favour of the appellant, in my judgement, the interference for the purposes of the maintenance of effective immigration control is proportionate and, it follows, lawful.
58. It follows that I dismiss the appeal on all grounds.

Notice of Decision

59. The appeal is dismissed.

V. Mandalia

Date 24th February 2023

Upper Tribunal Judge Mandalia