



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

Appeal Number: AA/07709/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 14 January 2015**

**Decision & Reasons
Promulgated
On 22 January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

A S

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr S Walker, Home Office Presenting Officer

For the Respondent: Mr J Kirk, Counsel, instructed by Elder Rahimi Solicitors

DECISION AND REASONS

1. The respondent is a citizen of Afghanistan and his date of birth is 1 January 1995. I shall refer to him as the appellant as he was before the First-tier Tribunal.
2. The appellant arrived in the UK on 11 February 2009 and claimed asylum that day. The application was refused by the Secretary of State on 4 June 2009. His application was refused, but he was granted discretionary leave until 4 June 2012 under the policy for unaccompanied minors. The

appellant did not appeal against that decision but he made an application on 11 May 2012 to vary his leave (pursuant to Rule 335 of the Immigration Rules). This application was refused by the Secretary of State in a decision of 2 September 2014. It is this decision and the removal decision against which the appellant appealed.

3. The appellant's appeal was allowed by Judge of the First-tier Tribunal Lal in a decision that was promulgated on 12 November 2014 following a hearing on 3 November 2014. The appellant was an adult (aged 19) at the date of the hearing before Judge Lal. Permission to appeal was granted by Judge of the First-tier Tribunal Kelly in a decision of 2 December 2014 and thus the matter came before me.

The Appellant's case and the Decision of the Secretary of State

4. The appellant was born in Laghman province. He lived with his parents and his sister and he did not attend school in Afghanistan. His father farmed land there in order to support the family. In 2006 the appellant's father joined the Taliban and became involved in fighting. In 2007 the appellant's father was arrested and taken to Kandahar prison where he had escaped having been incarcerated for a year and a half. He returned home and continued to fight with the Taliban. He became a commander. The appellant was scared of his father's enemies within the local community and he took to staying indoors. He was protected by his cousin who was armed.
5. In 2008 the appellant's father was arrested again. The appellant was not present at the time but he was told about this by his cousin. His enemies had reported him to the authorities. The appellant's cousin told the appellant that it would be dangerous for him to remain in Afghanistan. The appellant remained at home for four or five nights thereafter and then fled. He fled Afghanistan because he feared being perceived as a Taliban sympathiser. In support of his application the appellant submitted a number of documents.
6. The Secretary of State accepted the appellant's account of his age but noted that he had not raised new issues in his second asylum application, he was not able to provide details of his father's involvement with the Taliban and he had produced no evidence to substantiate his claim. It was not accepted by the Secretary of State that the appellant had established that his father was a member of the Taliban. The Secretary of State conceded that she did not initially conduct tracing obligations but concluded that it had not been possible to locate the appellant's family on the information provided by the appellant. A family tracing referral was made on 22 February 2014.

The Hearing Before the FtT

7. The appellant relied on his two witness statements and in addition he gave evidence in Pashto through an interpreter. The Judge heard evidence from the appellant, his foster mother, Mrs Elaine Miller. He heard evidence from Rosemary Demin, the appellant's teacher and Maya Pritchard from Asylum Welfare. The Judge also relied on an expert report produced by the appellant from Claudio Franco of 23 October 2014.
8. The Judge accepted that the appellant was credible and accepted his account. He found that it was consistent with the expert evidence. He found that the appellant would be returning to Kabul without family or tribal protection and that he would be returning as the son of a Taliban commander from an insurgency area. He found that the appellant had adopted western mores and that he was in need of a high level of support (see [24] of the determination).
9. The Judge made material findings at paragraphs 23 to 36 of the determination.

"23. Having considered the matter with some care the Tribunal is satisfied that the account given is a credible one. This is because the account has remained consistent throughout in terms of the two witness statements (given in 2009 and 2014) as well as the Appellant's oral evidence. Under cross-examination the Appellant was consistent with his earlier evidence and he did not seek to add to or embellish the earlier account. The Appellant's recollection was consistent and credible and the Tribunal is prepared to accept that the matters happened in the way described; namely his father was a Taleban commander, which eventually culminated in a visit to the family home for arrest by armed men and the need to leave quickly. The Appellant cannot be criticised for his lack of detail because the Tribunal accepts that he would have been privy to only limited information in any event because of his age. The expert report and country evidence support the home area as being 'socially fractured and riven with bitter antagonisms.' This is supported by the Appellants own account that an armed family member home normally guarded his family home and that 'enemies' were present in the village. The Tribunal found the Appellant's account to be credible and consistent with the existence of rival village factions.

24. The Tribunal has applied the case of **AA (Unattended children) Afghanistan CG [2012] UKUT 00016 (IAC)** and it is satisfied that the Appellant's home area is a site of insurgency and that the Appellant has provided a vivid account of events with compelling detail and consistency and is highly unlikely to have invented the detail especially when first given as he was a minor. It has not been suggested that the Appellant has any other family in Afghanistan. The Tribunal is satisfied that were the Appellant to be returned in Kabul he would be without family or tribal protection and it would be unduly harsh for him to be so returned. He would be returning as the son of a Taleban commander from an insurgency area and in the absence of any familial or tribal protection he would be at real risk of persecution because of this. There is the added complication, which the Tribunal

accepts, that the Appellant has adopted Westernised mores as described by Mrs Demin, and therefore would arguably be at risk even from his family's previous associates as he would now be regarded as supportive of 'infidel' powers. The Tribunal is satisfied that the Appellant's personal circumstances are such that he continues to face such a risk as he is still deemed by social services, his caseworker and his foster parent as still needing high levels of support.

25. Taking all matters into account, the Tribunal finds that the Appellant is at real risk of persecution under the Refugee Convention because of his perceived political association (that is being pro the Taliban) and or being seen as now being pro-Western by his father or his father's ex associates on his return to Afghanistan.
26. For very much the same reasons as those given above, the Tribunal allows the humanitarian protection appeal. The Appellant faces an individual threat of serious harm, on his return to Afghanistan.

Article 8 of the ECHR

27. The Tribunal has had regard to the provisions of Section 117A of the 2002 Act as amended. Public interest considerations apply in all cases and these are set out in Section 117B.
28. The Tribunal has therefore considered Article 8 in the light of the above and notes that it is a qualified right. It is normally for an appellant to establish that he or she has family and or/private life that will be interfered with on return to his or her own country, and the burden then shifts to the Respondent to establish that any such interference is not only legitimate but is also necessary and proportionate.
29. The correct test for assessing Article 8 was articulated by Lord Bingham of Cornhill in **R (Razgar) v SSHD [2004] UKHL 27** at [17] in the now well-known 5-stage test.

- (1) Will the proposed removal be an interference by a public authority with the exercise of the 11/12/2014 applicant's right to respect for his private or (as the case may be) family life?*
- (2) If so, will such interference have consequences of such gravity as potentially to engage the operation of article 8?*
- (3) If so, is such interference in accordance with the law?*
- (4) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?*
- (v) If so, is such interference proportionate to the legitimate public end sought to be achieved?'*

30. The Tribunal is satisfied that the Appellant has both a family and a private life with Mrs Miller and her family other in the UK. The impression given was of a close knit and supportive family unit providing a high degree of care and support for each other. The Tribunal is in no doubt that the operation of Article 8 considerations is engaged and that any such potential interference is lawful. The real issue for the Tribunal is whether it is proportionate.
31. In this regard the Tribunal is mindful of the principle in the case of **Kugathas V SSHD [2003] EWCA Civ 31** that with regard to those over the age of 18 the existence of more than normal emotional ties is an essential one although this must not be a quest for something that would amount to 'exceptional.' This is fully reflected in the well-known principles in the **Huang** and **Beoku-Betts** decisions.
32. Having considered the oral and documentary evidence with some care, the Tribunal is satisfied that much of this is related to the circumstances of this particular Appellant namely the circumstances of his arrival, his age on arrival and his level of integration into UK society and the current level of emotional support provided by Mrs Miller and her family. The Tribunal is satisfied that this cannot be replicated in any meaningful way by email and phone contact.
33. The Tribunal is satisfied that the current relationships are of some considerable emotional dependency and the family unit has a high degree of dependency on each other as evidenced in the witness statements.
34. The Tribunal notes the observations of the Upper Tribunal in **Ghising and others [2013] UKUT 00567 (IAC)** that at first instance (and accepted as a proper factual basis) it was found that the 'Appellant and his parents genuinely enjoyed a close knit family life, in which they value and depend on each other for mutual support.' Ultimately, the question whether an individual enjoys family life is one of fact and depends on a careful consideration of all the relevant facts of the particular case. 'It was noted that this might well include an adult child who does not have a family of its own.'
35. In the present case the Tribunal finds that the Appellant does qualify on the particular facts as outlined above as his foster family has replaced his birth family and such replacement was done at an early age in the Appellant's life and has been one of some considerable dependency. The Appellant is a well-integrated member of his local community as attested to in the testimonial evidence and there is nothing to suggest that it would be contrary to the public interest to allow this appeal on this additional ground as well.
36. Again for very much the same reasons as those given above when dealing with the asylum appeal, the Tribunal finds that the Appellant's fears under Article 2 ECHR and/or of inhuman or degrading treatment breaching the Article 3 ECHR threshold on return to Afghanistan for any reason are both current and objectively well-founded. The Tribunal therefore allows the Articles 2 and 3 ECHR appeal."

The Grounds Seeking Permission to Appeal

10. The grounds seeking permission to appeal argue that the Judge failed to give adequate reasons for conclusions on material matters, the Judge did not give reasons why the appellant would be at risk from authorities in Kabul and it was not open to the Judge to rely on **AA (unattended children) Afghanistan CG [2012] UKUT 0016** because this case relates to the risk of exploitation faced by children returning to Kabul without family support. The appellant was almost 20 at the date of the hearing before the Judge. If it is to be inferred from the decision that the Judge was of the view that the appellant should be treated as if he was a child because of some particular vulnerability the Judge gave wholly inadequate reasons for this. Reference is made to him needing high levels of support but the specifics of these needs are not set out. There is no evidence that the appellant has adopted western mores as found by the Judge and this would not make a material difference to risk on return to Kabul in any event (**AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163 (IAC)**). The thrust of ground 1 is that the appellant failed to explain with adequate and rational reasons why the appellant would be at risk on return to Kabul.
11. Ground 2 argues that the Judge erred in allowing the appeal on grounds of humanitarian protection. Ground 3 argues that the Judge erred in relation to Article 8 and the balancing exercise, and the case of **Ghising & Ors [2013] UKUT 00567 (IAC)** is referred to in the grounds.
12. I heard oral submissions from both representatives. Mr Walker submitted that the Judge erred in relying on and applying the case of **AA (unattended children)** because the appellant was not a child at the date of the hearing. The Judge erred because he does not clearly identify the agents of persecution that would make relocation unduly harsh. The Judge did not take into account that the appellant gave evidence in Pashto and had lived in Afghanistan for thirteen years when he found that the appellant had adopted western mores. There is no reason why the appellant would be at risk of persecution in Kabul and there are no reasons that make out the high level of support that the appellant is said to require. The Judge's findings are inadequate.
13. Mr Kirk made submissions in the context of his Rule 24 response. The grounds seeking permission do not in my view understand the decision of the First-tier Tribunal. The Judge found that the appellant would be at risk of persecution on return to his home area as a result of his imputed political opinion and then the Judge went on to consider relocation to Kabul. The Judge found that relocation would be unduly harsh which is the correct test in accordance with established jurisprudence including **Secretary of State for the Home Department v AH & Ors [2007] UKHL 49**.

Conclusions

14. The Judge found that the appellant would not be at risk on return to Kabul. However, it is my view that this is not a material finding because he found that relocation would be unduly harsh (after having found that he would be at risk on return to his home area). This finding that the appellant would be at risk on return to his home area is not challenged. There is no specific challenge in the grounds to the decision that relocation would be unduly harsh. The Judge's findings which led him to this conclusion are challenged. It is argued that certain findings are inadequately reasoned.
15. The Judge found that the appellant would be returning as the son of a Taliban commander and there is no challenge to this finding. The Judge found that the appellant had adopted a westernised lifestyle. This may not be a material factor in relation to risk on return but it is a factor that the Judge was entitled to take into account when considering whether or not relocation would be unduly harsh. There is a considerable amount of evidence in the appellant's bundle which would entitle the Judge to reach a proper conclusion that the appellant has adopted a western lifestyle. In any event his decision in my view did not turn on this.
16. There is no challenge in the grounds to the finding that the appellant would not have family or tribal protection in Kabul. This is a material consideration when deciding whether or not relocation would be unduly harsh. The Judge accepted the appellant's evidence that he had attempted to trace his family but had failed. This evidence was corroborated by Stephanie McGreevy in her letter of 2 May 2012 at page 149 of the appellant's bundle. It was not an issue raised by either party that the Secretary of State had failed in carrying out her tracing duty which was not in any event material to the outcome of this case because the Judge accepted the appellant's evidence.
17. It is clear in my view that the Judge considered that the appellant was vulnerable and I refer specifically to [24] of the determination. The evidence is that the appellant is part of his foster family. There is a letter in the appellant's bundle from Croydon Unaccompanied Minors team of 30 April 2012 which indicates that the appellant would continue to receive support from the Unaccompanied Minors team until his 18th birthday when he will transfer to the Leaving Care team.
18. The documentary evidence does not in itself establish that there are any significant problems in relation to the appellant and from the evidence it is clear that he is intelligent and a good student. His foster mother's evidence is that he passed his driving test in 2014 and she describes him as a confident, ambitious and hardworking person in her letter of 30 September 2014. There is evidence from Rosemary Demin of 30 September 2014. Ms Demin has taught the appellant and she has witnessed his vulnerability when he has turned to her for support.
19. I accept that there was very little in the documentary evidence that would suggest that the appellant is vulnerable (save the letter from Rosemary

Demin referred to above). However, the Judge heard evidence from Ms Demin and he recorded the following at [17] of the determination;

“The next witness to give evidence was Rosemary Demin who adopted the contents of her letter dated 30 September 2014. Mrs Demin was a teacher of 40 years standing and taught the appellant for a period of two years. She stated that in her opinion the appellant had adopted westernised values and was liberal in his outlook and would find it very difficult to adjust to a traditional Afghan life. She described the relationship that the appellant had with Mrs Miller to the extent that he addressed her as mother.”

20. The Judge also heard evidence from the appellant’s foster mother, Mrs Miller, and her evidence is recorded at paragraph 16 as follows:

“The second witness to give evidence was Mrs Elaine Miller who adopted her witness statement/letter from the bundle. She confirmed that he was the foster mother of the appellant since arrival and that exceptionally she had allowed the appellant to stay on after the age of 18 because she thought he was not able to support himself independently in the community and still needed a high level of emotional support. She described the nightmares that the appellant had experienced in the earlier period of time that he was with her and how these had lessened. She described the relationship that she enjoyed with the appellant and how he considered her his mother as well as the relationship enjoyed with her natural children.”

21. The Judge also heard evidence from Maya Pritchard from Asylum Welfare and recorded her evidence at paragraph 18 as follows:

“The last witness to give evidence was Maya Pritchard from Asylum Welfare and she described the contact that the appellant has had with her organisation. She adopted her letter dated 21 October 2014. She described the appellant’s education achievements and also the efforts that were jointly made in order to try and trace his family with the Red Cross but to no avail in 2012.”

22. The Judge in my view was entitled to consider that the appellant was vulnerable having accepted the evidence of the witnesses and it was open to him to conclude that he needs a high level of support as this was the evidence before him. In my view this is a material consideration in deciding whether relocation would be unduly harsh. The Judge found a high level of emotional dependency (see [33]), having taken into account both the appellant’s evidence and that of his foster mother and her family. In my view it was not necessary for the Judge to make specific and detailed findings in relation to the nature of this dependency.

23. The Judge referred to the case of **AA (unattended children)** in relation to the appellant’s credibility in the light of his age, when material events occurred. The grounds argue that the Judge treated the appellant as a child but I am not persuaded of this. The Judge was aware that he was dealing with an adult appellant and this is clear throughout the determination. However, it was open to him to find that he was a

vulnerable young adult and to take into account that the appellant was a child at the time of the key events.

24. The Judge accepted the unchallenged evidence of Claudio Franco and although the Judge did not set out the evidence in his determination it was clear that he took it into account in reaching the conclusion that relocation would be unduly harsh. The evidence of Claudio Franco (in relation to relocation to Kabul) is as follows:

“27. The option of relocating to Kabul is mentioned, potentially with AS’s mother and sister. As AS points out in his Appeal Statement, decisions like this are not made by women in Pashtun culture, and traditional Afghan village women do not work outside of the house. AS’s mother would be very unlikely to possess the initiative, the skills, or the independent finances necessary to relocate to Kabul with him. Indeed, a short walk anywhere in Kabul will demonstrate that a majority of the beggars on the streets are destitute mothers with no men to support them, whether their husbands have been killed, arrested, vanished or simply run away.

28. The option of AS making his own way in Kabul must be considered. AS is a young man whose life experience consists firstly of life in a remote rural mountain village, and secondly, of a life in the UK which has been directed and structured by social services, school, etc. Neither has prepared him for life in a chaotic, teeming, predatory large city full of desperate people, such as Kabul. Lacking a home, employment and any friends or family members – indeed, any contacts at all – his situation would be extremely precarious. It must be remembered that in Afghan culture and society, the importance of family and kinship networks and the support they provide are absolutely central, and constitute defining traits of a person to an extent which it is difficult to understand when accustomed to the highly individualistic perspective of British culture. This means that relocating and ‘vanishing’ into the anonymity of a large city is not possible in the same way that it would be in the UK or Europe; as family, local and ethnic/tribal connections are so paramount in importance, people will always be asked for, and defined by, their origins in these terms. These factors are important when seeking employment, particularly employment in ‘professional’ or ‘educated’ posts, and his opportunities in this regard would be much reduced by these circumstances, whether he has marketable skills learned in the UK or not.

29. Unemployment is high in Afghanistan, and as the western nations withdraw both their military forces and draw down their humanitarian aid and re-construction and infrastructure investment, the economic situation will only get worse; the government of Afghanistan estimates it needs to create 500,000 new jobs (in a country of 30-35m population, largely still dependent on subsistence agriculture) to balance the economic vacuum which will be created by the western withdrawal.

30. Due to the massive return of refugees from Pakistan after 2001, which led to the population of Kabul increasing beyond the capacity of its

infrastructure, and due to the destruction of 65,000-70,000 houses caused during the war, many of which have still, 13 years later, not been rebuilt, housing is a major problem in Kabul. A four bedroom house in a more affluent neighbourhood can cost \$10,000 a month to rent. As of early 2011, even in the most remote and inaccessible parts of Kabul (up the mountain sides), the average family house was rented for \$220-330/month, with no running water or electricity provided. According to the Afghan Ministry of Housing, the number of houses urgently needed is 180 per cent more than those currently existing. On average, Kabul's houses and flats accommodate more than three times as many people as they were built to, according to the Ministry of Housing. The typical low income Afghan household would cope by sharing one or two rooms among 7-12 individuals.

31. Earning a livelihood on his own would be a major challenge. As mentioned above in this report, and as pointed out by AS himself, access to skilled and educated jobs - one which might, for example, make use of AS's English or computer skills - is still widely dictated by connections and nepotism. Employment with a foreign NGO or other organisation may have been an option several years ago, but as noted, most foreign organisations are drawing down their presences in Afghanistan, leaving large numbers of drivers, interpreters, translators, logistics assistants and other workers unemployed.
32. Unskilled work as a daily labourer in the building industry is the most widely available option, but due to massive unemployment (35-50% depending on the estimates) most workers only get a few days of work each week; his chances of getting even this type of employment would depend on his physical strength. Daily labour rates in Kabul are about 200 afs/day (US\$4), but of course work is not always available. EUPOL estimates that a man with a family needs \$600 to live in Kabul; a single man would need a fraction of that, probably \$200 at least. Other chances of employment are paid even less: as a baker earning 40 Afs. (US\$0.80) a day, for example.
33. Were he to be forced to relocate to Kabul on his own, the probability of his ending up on the street without home or employment therefore is very high, in a city already awash with desperate people, having an infrastructure stretched to breaking point, and lacking any form of social services. He might have recourse to various options in this case, involving charitable organisations such as ASCHIANA who provide free meals, or the Revolutionary Association of the Women of Afghanistan (RAWA), who run an orphanage in Kabul. Even at best, these options would provide a subsistence or survival level existence. Added to this must then be the considerable risks of becoming a victim of crime on the streets, or of sexual predation of street children, which is a significant problem.
34. The RFRL mentions the availability of return and reintegration packages to support returnees to Afghanistan, but cautions that it would be 'unwise to exaggerate the importance of such packages'. While I do not have access to information which would allow me to evaluate what form of such support, if any, might be available to AS - my understanding is that such packages are normally only available to

voluntary returnees – I would point to a study commissioned by the Norwegian Directorate of Immigration, which also discusses in depth UK Home Office return policies and IOM (International Organisation for Migration) and other such packages available. To quote from the study,

‘in discussion with this study team some [UK] officials expressed little confidence in the effectiveness [of such packages]... Rather, the wider contextual issues such as personal circumstances and conditions in the home country were seen as determining factors.’

35. Hostile attention from either ANSF or Taleban within Kabul must be considered. Living on the street, eventual encounters with the police would be inevitable. Aside from the standard police abuses which are a risk to anyone in this position, people in Afghanistan are identified, rather than by name, surname and address, by their name, their father’s name (or husband’s name, in the case of women), and their village and district of origin. This being so, it is possible, albeit not highly likely, that he might be identified as the son of an active Taleban member, which could lead to an escalation of the abuse. As for the Taleban, they operate country-wide information and intelligence networks. Again, while not highly likely that Taleban would identify him in Kabul, were this to happen, they would almost certainly leverage his vulnerable position to attempt to recruit him or return him to his father.
36. As mentioned, western military involvement in Afghanistan is being drawn down, with a view to a complete pull-out by 2014, leaving a minimal number of troops for vital stability and infrastructure protection operations. While reliable figures are difficult to come by, after a peak in 2009, contributions of humanitarian, aid and development funds are now decreasing and will continue to do so; this will further negatively impact the ability of charitable organisations and NGOs to mitigate the effects of destitution and displacement caused by war in Afghanistan. With the departure of foreign troops, the risk that Afghanistan will return to a state of all-out civil war and fragmentation similar to that seen between the withdrawal of Soviet forces in 1989 and the rise of the Taliban in 1994-1996 is very real, as even the Parliamentary Defence Select Committee appears to tacitly acknowledge. Sadly, all of my experience and knowledge regarding the Afghan situation leads me to consider a negotiated political solution leading to the end of all hostilities highly unlikely.
37. In conclusion, having spent a significant amount of time over the past 15 years travelling, living and working in Afghanistan and Pakistan as a journalist, author, researcher, investigator and analyst, it is consistent with my knowledge and experience that:
 - a) AS’s account of his life before he left Afghanistan, and his account of his father’s activities with the Taleban, though lacking in confirmation from independent sources, is on its own terms believable, considering the prevailing cultural, social, political and military context, and contains some details that match known

events of historical record and that match wider events and trends in the country at the time.

- b) Were AS to return to his village and district of origin, considering his circumstances, he would be at real risk of intimidation, injury, forced recruitment, or death, whether from the Taleban, ALP, or local militias.
- c) Were AS to relocate or attempt to live in Kabul on his own, he would be highly likely to end up living on the street, and would be at real risk of threats such as malnutrition, disease, victimisation by criminals, and sexual predation.”

25. All the factors referred to by Claudio Franco are relevant when assessing whether relocation would be unduly harsh and it is clear that the Judge took these factors into account in doing so. In my view the Judge did not make an error of law in allowing the appeal on asylum grounds.
26. In relation to ground 2 the Judge erred in allowing the appeal on grounds of humanitarian protection for the reasons identified in the grounds.
27. In relation to ground 3 this must be considered in the light of the fact that the Judge made a lawfully sustainable finding in relation to asylum. In any event, the application was made before the new Rules 276ADE and Appendix FM and I am not persuaded that the Judge materially erred for the reasons given in the grounds of appeal. In any event it is unlikely that it could be proportionate to remove the appellant in light of the legally sustainable finding that it would be unduly harsh to expect him to relocate to Kabul. The Judge concluded that the determinative issue in relation to Article 8 was proportionality. It was open to him to find that there was family life between the appellant and his foster mother in the **Ghising** sense, **Ghising & Ors [2013] UKUT 00567 (IAC)**, and the grounds in my view do not identify that the balancing exercise was in any way flawed.

Notice of Decision

28. There was no error of law in the decision of the Judge to allow the appeal on asylum grounds and under Article 8 of the 1950 Convention on Human Rights and both of these decisions are maintained.
29. I set aside the decision to allow the appeal on grounds of humanitarian protection.

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 his 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 Joanna McWilliam

Date 21.01.15

Deputy Upper Tribunal Judge McWilliam