



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/05509/2014

THE IMMIGRATION ACTS

Heard at Field House
On 6 January 2016

Sent to parties on:
On 12 May 2016

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

R O
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Head instructed by Lawrence Lupin solicitors
For the Respondent: Ms A Holmes, a Senior Home Office Presenting Officer
(on 30 November 2015) and
Mr P Nath, a Senior Home Office Presenting Officer
(on 6 January 2016)

The Upper Tribunal has made an anonymity order pursuant to paragraph 14(b) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended). The effect of such order is to prohibit the disclosure of any matter likely to lead members of the public to identify the appellant until the termination of these proceedings or further order. Any breach of this order may be treated as a contempt of court.

DECISION AND REASONS

1. The appellant is an Afghan citizen and is 19 years old. He came to the United Kingdom as a minor. He appeals with permission against the decision of First-tier Tribunal Judge Miller, who dismissed his appeal against the respondent's decision to set removal directions to Afghanistan, his country of origin, after refusing him refugee status, humanitarian protection or leave to remain in the United Kingdom on human rights grounds. The First-tier Tribunal's decision has been set aside and I now remake it.

Background

2. The appellant was born in Kunduz Province in August 1996. He left Afghanistan in 2011 and travelled to Austria, with the help of an agent, spending 15 days in Iran, 5-6 days in Turkey, then travelling on through Serbia, Macedonia and another unknown country, to Austria where he spent a year, and claimed asylum. His asylum claim was refused by the Austrian authorities.
3. The appellant did not wish to return to Afghanistan, so he travelled on through Italy, France and Belgium, heading for the United Kingdom, where he arrived on 8 November 2012 and claimed asylum on 28 November 2012. He was served with a form IS 151A as an illegal entrant. He was still only 16 years old.
4. In his asylum statement of 17 December 2012, the appellant gave his name, nationality and date of birth. He is now 19 years old and was born in Chardarah District, Kunduz Province. His father (whose date of birth the appellant does not know) died in a suicide attack in 2011. His mother now lives with his grandfather in Kunduz. He had two brothers and two sisters: One brother and one sister have been killed. One brother is missing and one sister lives with his mother. She is now about 17 (she was 13 in 2012). The other brothers and sisters, both brothers and his late sister, were all older than the appellant.
5. The appellant had only 5 years of schooling before coming to the United Kingdom. His education, in two High Schools in his home area, was interrupted by threats to his life and the poor general situation.
6. The particular problem which the appellant's family faced arose, as so often in Afghanistan, from a land dispute which went back to before the appellant's birth. The land dispute has been resolved, but the ill feeling between the parties persists.
7. The appellant's late father was the elder of their village and a close friend of the district chief, who bears the same surname. They were always together. The district chief was also a close friend of the appellant's uncle (his maternal uncle).
8. When the Taliban captured Kunduz Province, they asked his father for money and weapons. His father's cousins had links with the Taliban, and one of them was a Taliban commander. In 2009, the Taliban cousins captured two tankers of American oil next to a river, and invited the villagers to come and get oil. They stopped the

American oil supply: the Americans bombed the area where the tankers were. 150 people were killed, including the appellant's maternal uncle and brother. There are YouTube and Al Jazeera reports of the incident. It seems that compensation was paid to the appellant's family by the Americans for the death of his uncle and brother.

9. The appellant's surviving brother wanted revenge and killed one of the Taliban cousins, a brother of the Taliban commander. Another of the Taliban commander's brothers registered a complaint with the authorities, naming the appellant's surviving brother as the killer.
10. The authorities arrested the appellant and his father. They took them to the police station and beat them and tortured them. The appellant still bears scars on his chin and back. The district chief, his father's close friend, facilitated their release: the appellant thinks bribery was involved but is not sure. The appellant would then have been about 13 years old.
11. His father and the district chief set up a negotiation meeting and invited the Taliban commander's family, to settle the matter peacefully. The Taliban commander's family did not attend: instead, they sent a suicide bomber, and when the bomb exploded, the appellant's father, the district chief, and four other elders who had come to help negotiate, were all killed.
12. The district chief was succeeded by his brother, who was sympathetic to the appellant's family. He warned the appellant's maternal grandfather to get the appellant out of the country as soon as possible as he would be next to be targeted. The appellant's grandfather told him, and arranged the journey, using the American compensation money.
13. The appellant supported his account with photographs of the people concerned and the American bombardment site.

Refusal letter [18 July 2014]

14. The respondent considered the application as one of imputed political opinion. She noted that the appellant had not produced a passport to verify his nationality and/or identity. However, the appellant responded to geographical questions about Afghanistan and she accepted that he was an Afghan citizen.
15. The respondent accepted that the appellant had been diagnosed with post-traumatic stress disorder (PTSD), but that on his evidence, he no longer met the criteria for that diagnosis as he had recovered to some extent. She did not place any weight on the photographs as they were of poor quality, in the public domain, and added little to the appellant's account. She accepted that the appellant's account of the US Tankers Incident was consistent with publicly available information about what had occurred. She accepted that there was a reasonable degree of likelihood that the appellant's father and brother had been killed in that incident, as alleged.

16. The respondent also accepted that the Taliban Commander cousin existed, and that there was a reasonable degree of likelihood that the appellant was related to him as claimed. She accepted that the suicide attack had occurred and that the appellant's father and brother had been killed in that attack.
17. The respondent did not accept that the appellant's brother had joined the Taliban because at interview, the appellant had stated that he had joined Al-Qaeda and that it was a branch of the Taliban. The respondent did not accept that the two organisations were linked as claimed. She had been unable to verify the death of the Taliban commander's brother from publicly available information.
18. In relation to the appellant's 2011 arrest, the respondent accepted that the account of torture during questioning was consistent with external information about Afghanistan but was not satisfied that the evidence produced showed that the appellant himself had been arrested. However, having regard to the lower standard of proof, she also accepted that the appellant's brother had killed the Taliban commander's brother and that the appellant had been arrested, tortured and killed in consequence.
19. It was on that basis that the respondent approached the risk on return. As she had found that the appellant's brother was not a member of the Taliban, and the appellant himself had never been involved with or supported the Taliban, she did not consider that there was a real risk of persecution or serious harm because of any direct or indirect link between the appellant and the Taliban. She did not condone the killing of the Taliban commander's brother: she considered that the Afghan authorities had an interest in investigating murders, but that the methods used were improper. As the appellant had been released, the respondent considered that the Afghan authorities would have no future interest in questioning him about it. He had remained in Afghanistan for some time after his arrest and had not been questioned further. There was no real risk of persecution or serious harm from the authorities by reason of his brother's criminal activity.
20. The respondent did accept that the appellant had a well-founded fear of persecution for a Refugee Convention reason from 'those with Taliban links in your local area'. She considered the available protection from the Afghan authorities and whether internal relocation elsewhere in Afghanistan would enable the appellant to be safe from persecution or serious harm. On the basis of the international materials, the respondent accepted that in Taliban controlled areas, the Afghan state was able to provide only limited, if any, protection.
21. The respondent considered that the appellant had an internal relocation option to Kabul. He would not have a well-founded fear of persecution there: he speaks Pashtu, has family in Afghanistan (albeit in a Taliban-held region), had been educated in Afghanistan for 5 years and also in the United Kingdom. There was at least some provision for psychiatric care in Kabul, should the appellant need it. He had an aunt in Faryab, in western Afghanistan close to the border with Turkmenistan. He had spent two months living with her before travelling to Austria and could choose to live there without difficulty. The Refugee Convention claim was rejected. The humanitarian

protection claim failed for the same reasons, as did the appellant's claims under Articles 2 and 3 ECHR.

22. The respondent then considered Article 8 ECHR. The appellant had been in the United Kingdom for only 2 years and was approaching 18 years old. He had lived in Afghanistan for approximately 15 years. She applied the 'no ties' test in paragraph 276ADE and concluded that the appellant could not meet the requirements of the Rules. His section 55 best interests as a child would be best served by return to his family in Afghanistan and a culture with which he was familiar.
23. The respondent did not consider that the appellant's schooling, his friends, or his community involvement, amounted to exceptional circumstances for which leave to remain should be given under the Immigration Rules.
24. The respondent then considered the possibility of discretionary leave. She began by considering the PTSD diagnosis. She did not consider that the high standard required for foreign medical cases (Article 3 ECHR) was met in this case. There were medical facilities in Afghanistan should he require them. The asylum claim was refused and no other basis for granting leave was identified in the refusal letter.

First-tier Tribunal decision [30 March 2015]

25. The appellant appealed. The First-tier Tribunal Judge found that the authorities would now have no interest in this appellant and that he was not entitled to refugee status or humanitarian protection. As regards Article 8 ECHR, the Judge said this:

"43. With regard to Article 8 ECHR, it is clear from the country information that there is not only a specialist psych hospital in Kabul but also out-patient mental health facilities across Afghanistan. He would be returning to the culture in which he grew up, and, I suspect, would be able to resume contact, albeit maybe initially only by telephone or letter, with his mother, this being somewhat easier to do from Kabul than from the United Kingdom. If this were the case, whilst undoubtedly he would not be in the same position that he would have been in, in the United Kingdom, where he could have sent money across to his family, there would be other positive aspects, such as renewing communication with his mother, which could only be beneficial.

44. It was agreed by Mrs Head [for the appellant] and Miss Pountney [for the respondent] that the appellant has no Article 8 family rights in the United Kingdom, and that he cannot succeed under paragraph 276ade in respect of his private life. Mrs Head nevertheless submitted that, taking account of all the circumstances, the case was sufficiently exceptional for the appeal to be allowed. Having regard to all that I have stated above, however, I do not find this to be the case. It is, of course, true that the appellant has lived in the United Kingdom for 4 years, since November 2010. It is also true that the respondent has delayed in interviewing him and considering his claim. That said, the reality is that there will inevitably be considerable delays, given the pressure on the existing system, caused by the large influx of migrants to this country. Moreover, in view of the fact that the appellant was a minor, he was never likely to have been removed before his 18th birthday.

45. I find that the reality of this case is that the appellant, like so many, particularly from his country, has come to the United Kingdom, whilst still a minor, motivated, I find, by a number of reasons including not only the security situation but also the opportunities for education and employment in the United Kingdom. Very many such young people suffer from symptoms of depression and/or PTSD. As I have observed above, any such symptoms have not prevented him, either from making the difficult journey to the United Kingdom in the first place, or from pursuing numerous courses and obtaining a large number of educational certificates whilst here. I accept, of course, that he has not been in trouble with the police. I also accept that he is held in high regard by those who have worked with him, and not least by Ms Chase-Massey [sic] and Mr Ampofo, who came to the hearing. ...”

26. The judge nevertheless found that the appellant’s removal was proportionate and dismissed the appeal on all grounds. In so doing, he made no reference to any country guidance cases on Afghanistan, nor did he engage in his reasoning with the differences between the matters accepted by the respondent in her refusal letter and his own findings.

Leave to appeal to Upper Tribunal [24 April 2015]

27. Permission to appeal was given on the basis that the First-tier Tribunal decision was arguably insufficiently reasoned in relation to findings which conflicted with matters conceded by the respondent; findings as to whether the appellant could return safely to Afghanistan; the medical evidence; and the consideration of irrelevant evidence prejudicial to the appellant’s case. In particular, the Judge noted that the First-tier Tribunal had not directed itself by reference to relevant country guidance from the Asylum and Immigration Tribunal in *RQ* (Afghan National Army - Hizb-i-Islami - risk) Afghanistan CG [2008] UKAIT 00013.

28. On 9 June 2015, Deputy Upper Tribunal Judge Grimes gave leave to the appellant to expand on his grounds of appeal to include and particularise an allegation of bias by the First-tier Tribunal Judge. That allegation is currently being considered in the Upper Tribunal’s judicial complaints procedure and it is agreed that the Upper Tribunal need not deal with it in this decision.

Error of law [6 October 2015]

29. At the error of law hearing on 9 October 2015 (before Lord Burns, sitting as a Judge of the Upper Tribunal and Upper Tribunal Judge Gleeson), the Tribunal held, and the parties agreed, that there was indeed a material error of law in the decision of the First-tier Tribunal and that it could not stand. The Tribunal proposed that the appeal decision be remade in the Upper Tribunal before either Lord Burns or Upper Tribunal Judge Gleeson on a date to be fixed, and gave directions.

30. The appellant was present at the hearing and was given an opportunity, with the assistance of the Court interpreter, to confirm his instructions with Ms Head. He confirmed that he was content for the matter to be dealt with as proposed by the Tribunal and the representatives.

31. That is the basis on which this appeal came before me to remake the decision.

Substantive Upper Tribunal hearing [6 January 2016]

32. In accordance with our earlier directions, the parties filed evidence and submissions before the hearing. The hearing resumed before Upper Tribunal Judge Gleeson on 6 January 2016, for substantive remaking of the appeal decision. I begin by summarising the evidence, oral and documentary, which was before me.

Oral evidence

33. I heard oral evidence from the appellant, from Rebecca Massey-Chase, who was an educational mentor for him, under the auspices of the Refugee Support Network, and from Laura Toal, his allocated social worker both when he was a looked-after child and during the period when he received support services under the Children (Leaving Care) Act 2000.

34. The appellant's partner, who had not previously been mentioned in these proceedings, was present at the Upper Tribunal hearing and had prepared a witness statement. She was not called. I have had regard to her witness statement, giving it such weight as it will bear in the absence of cross-examination.

Appellant's evidence

35. The appellant adopted his witness statements to date, which he confirmed as true and correct. He wished me to treat them as his evidence in chief.

36. The first witness statement was on 28 January 2015, in response to the respondent's refusal letter. In that statement, he stated that he did not have the original photographs: he had electronic copies which a friend in Austria had helped him download from the internet: the first photograph showed his brother's funeral, including his uncle and his paternal grandfather. The appellant was not in the picture, although he was at the funeral, because he was unwell and went home after a short time. He noted that the respondent had found the same photograph on the internet as part of an article about Kunduz Province: the appellant said there was a journalist at the funeral, taking pictures. In the photographs of his brother with weapons, the appellant was not to be seen because he took the pictures.

37. The appellant stated that he must have forgotten to tell his solicitor that his brother was a member of Al-Qaeda. He did not know how he had missed that, but he had remembered to say it in his asylum interview. His understanding was that Al-Qaeda was part of the Taliban, and they did not think of the two groups as distinct, because they participated in jihad together.

38. The appellant asserted a continuing risk from both the Taliban and the Afghan government if he returned. That was why the authorities had arrested the appellant and his father. The family had Taliban links and the authorities would suspect all of them of collaborating with the Taliban. His father, and his other protector, the district

chief, had died in the suicide bombing: now, he had no one to protect him. The government's grip in Kunduz Province was weak and he did not know whether his uncle would be able to help him if he returned there, or even whether his uncle was still in Kunduz. His uncle and aunt, who hosted him in Faryab just before he left Afghanistan, do not live there: his uncle was doing a job in Faryab, and had stayed there for work purposes, for 2 or 3 months, on several occasions. The uncle would then return to Kunduz, where he lived: the appellant had not heard from him for a long time and did not know whether he was alive or dead.

39. The appellant asserted that medical treatment in Afghanistan for him would be hard to get and very expensive, which would be a problem as his mental health would deteriorate if he were returned. He had been seeing a psychologist every 2 or 3 weeks before turning 18: now he had been referred to the Adult Mental Health Services and had been to one appointment. He was waiting for a further appointment. He had provided medical evidence from Dr Lindsey Wood, describing panic attacks that he experienced, had authorised the production of his medical notes, and had provided an expert report from Dr Juliet Cohen confirming that he still had PTSD.
40. The appellant was concerned that on return, without any family protection, he was vulnerable to sexual abuse: there were articles and videos on Google suggesting that boys were captured and kept for sexual purposes by older men. It would be extremely difficult for him to re-establish himself as there were no jobs in the provinces and in Kabul, given his lack of experience, the appellant would have problems finding work. He had no close family to help him. In the United Kingdom he was integrated, and had the support of the authorities, which he would lose if returned to Afghanistan.
41. In his second witness statement, prepared on 15 October 2015, the appellant disclosed for the first time that he had a partner, with whom he had been in a relationship since some time in 2013. They had been friends for longer than that. He did not explain why she was not mentioned in his January 2015 statement. His partner was a little older: she had children aged 13 and 9. His partner had helped with the appellant's mental health problems, an 'extraordinary support' when he had nightmares and was scared; she reassured him and gave him massages to relax him. They stayed at each other's houses but were not living together at present. They planned to marry soon.
42. He still felt the need to self-harm by cutting himself, but had been shown coping mechanisms, and by distracting himself, he managed to avoid it. There was nowhere on his arm that he could cut anymore. He still had nightmares and woke up in the middle of the night, scared.
43. The appellant was continuing to study at Barnet Southgate College. He had a studio flat to himself, and was studying ESOL Entry Level 3, Numeracy Level 1 and ICT. He felt settled in the United Kingdom and was recovering. However, given the deteriorating news in the media about Kunduz Province, the appellant was feeling under pressure mentally and might need to return to taking anti-depressants, which presently he was not doing: he was worried about his mother and grandfather.

44. The appellant remained very scared of return to Afghanistan. He had no means of contacting his family members there and did not know whether they were dead or alive. He had received an indirect message from his mother in 2011/2012 when he was travelling to the United Kingdom, that 'his family was ok', but nothing since, and there was now serious fighting in Kunduz Province. He still feared both the Taliban and the Afghan authorities in Kunduz.
45. The appellant had no relations, family or friends who could support him in Kabul; he had travelled through it on his way out of Afghanistan just once, but never stayed there. Kabul was unsafe and here, too, he feared both the Taliban and the Afghan authorities. If he gave his family name and said he came from Charderah District in Kunduz Province, the Taliban headquarters, he would automatically be suspected of Taliban links and would be at risk of being killed. People in Afghanistan are shown on the news as leaving in droves, to camps in Takhar Province and Kabul.
46. There had been a large influx of people to Kabul. He was uneducated and unable to find employment there, and he still felt he risked sexual exploitation. He would be unable to find accommodation or mental health facilities: he would be forced to live on the street, without treatment for his depression and PTSD.
47. In answer to supplementary questions from Ms Head, the appellant stated that since October 2015, he had no contact with anyone in Afghanistan and that he had no family in Kabul, as far as he was aware. He was tendered for cross-examination.
48. In reply to questions from Mr Nath for the respondent, the appellant stated that his brother was a member of the Taliban but he himself had never been a member or had any Taliban involvement. The family's enemy was a leader of the Taliban who had killed the appellant's brother and uncle. His other brother became angry, and joined the Taliban, along with a friend. They killed the enemy's brother.
49. The appellant said that he had no relatives in Kabul, although he still had relatives in his home area. The appellant comes from the Kunduz area, where it was well known that the most dangerous Taliban fighters lived. There were 2 villages with 1000 people, all with the appellant's surname, and all known to be supporters of the Taliban.
50. Altogether, there were 9 cities in North Afghanistan, but there were very few Pashtu speakers there although there were many languages spoken in his city. Other people did not want the Pashtu-speakers. They thought they were all Taliban, who wanted to kill all normal people and 'finish it off'.
51. A man the appellant knew had tried to go to the city at the peak of the fighting: he was a University student. As soon as they heard his family name and where he came from, they shot him.
52. A few months earlier, the Taliban had taken over the whole Kunduz area but the army had travelled from Kabul to Kunduz to help recapture the city. The government now controlled the cities in Kunduz province, but not the villages.

53. The appellant had passed through Kabul on the way to the United Kingdom but no, t stayed. He had been in hiding, with the agent, who knew how to take him out of there safely. If the appellant had felt safe to live in Kabul, he would have stayed. The person who helped him had been a good friend of the appellant's father, and he was lucky to have that assistance.
54. If he was returned via Kabul, the authorities would ask him at the airport why he had left, and he would have to tell them. The authorities would consider anyone who came from his home area to be Taliban. The appellant's information came from the media. Every day he saw in the media that Kabul was unsafe.
55. His understanding was that the situation in Afghanistan was very bad now, that the Taliban and ISIS together had made it so. Two days before he gave his evidence, the appellant said that the Taliban had attacked the Indian Embassy in Mazar-e-Sharif, formerly considered a safe city in North Afghanistan, and that the Afghan Parliament now expected the Taliban to control all Afghan cities, especially in Helmand and Jalalabad. The British army had been sent to Helmand province, where the Taliban had taken two villages.
56. The appellant had two siblings of each sex, but one brother was dead and the other was with the Taliban: he did not know whether that brother was dead or alive. One of his sisters had also died. When the appellant came to the United Kingdom he had his mother, his grandmother and grandfather, and his surviving sister (now aged about 13 or 14) still living in his village. His grandfather had organised the finance to get the appellant to the United Kingdom: he was a man somewhere between 50 and 60 years old, the appellant thought.
57. The appellant was traumatised when he came to the United Kingdom. He used to take medication and the authorities put him in a hotel. He coped poorly: he felt bad at night, thinking about his family, it made him feel sick. He was hospitalised for 2 days and they gave him tablets and put him in a straitjacket.
58. He had been in a relationship with his British citizen partner for over 2 years. His partner gave him a lot of support, helping with his English, and comforting him if he woke up scared when she was next to him. His partner understood him and he was always happy when he was with her. However, he still had nightmares every week or two, thinking about his home, wondering where his family were; many people had been killed between Kabul and Kunduz during the Taliban takeover.
59. The appellant had no family in the United Kingdom but he had a social worker and a mentor, who gave support by supplying money (£57 a week) and housing. For everything else, he relied on Gemma. He was feeling good, with no pills and no counselling: it had been like that for a long time now. He was studying Maths, ICT, ESOL English at college in High Barnet. He had already achieved Level 1 Maths, NT3 in English and NT3 in IT. Next year, he planned to study to be an electrician.
60. If the appellant were to be returned to Kabul, he said he would be unable to support himself because he had nowhere to live, no family, and no money for education.

People who found out that he had come from London would think he was rich and kidnap and beat him, or think that the British had sent him. Either way, he would have many problems in Kabul. Without finance, how could he study, live, or buy his clothes? It was true that he had come to the United Kingdom with nothing and managed, but there was support from everybody, giving him a house, college, money for food, and everything. In Afghanistan, once the government knew where the appellant came from, and what had happened to his family, they would put him in jail.

61. In re-examination, the appellant said that if he were returned, he would be assailed by memories of everything he had been trying to suppress about his family. He would have to think about it then. At least now, the enemy did not know where he was and he had support, study and a partner in the United Kingdom. Everyone helped each other here, but in Afghanistan it was not like that.

Rebecca Massey-Chase

62. Ms Massey-Chase adopted her letters of 26 February 2014 and 20 October 2015 as her evidence in chief. She confirmed that the contents were true and correct.

63. In her letter of 20 October 2015, written on Refugee Support Network stationery, Ms Massey-Chase said that she had been working with the appellant as a volunteer educational mentor since June 2013, meeting him weekly for an hour at Willesden Green Library. The appellant was always punctual, polite and respectful, giving his full attention to the task in hand and never cancelling or being late. He was working impressively hard on his English, which was improving rapidly. He was keen to learn British culture and traditions, and looking forward to being employed in due course. The appellant's maths and information skills were growing and they had discussed the possibility of an apprenticeship, when he had completed his college course.

64. The letter concludes:

“Over the time I have spent with [the appellant], I have also gained an understanding of the ongoing distress caused by the uncertainty surrounding his immigration status. I have been very impressed by the dedication and commitment he has still managed to show to his study.”

65. Ms Massey-Chase's letter of 20 October 2015 records that she stopped being an educational mentor for the appellant in October 2014 when she relocated to Bristol from London and ceased her direct connection with the Refugee Support Network. However, she had remained in supportive contact with him by telephone, letter, and occasional meetings. Much of this letter repeats what was in the earlier letter.
66. The new material in this letter relates to the online feedback which Ms Massey-Chase gave about the appellant, and more detail about his fears if he is returned to Afghanistan. In November 2013, Ms Massey-Chase states that she wrote the following online feedback to the Refugee Support Network:

“Yesterday [the appellant] told me that he is very worried about his immigration status, as someone at his mosque told him he will be sent back when he is 18. ... [The appellant] said that he worries about this a lot and when he is very sad, cuts his hand. He says Chris [Housing Plus QARA] know about this and he has seen/is seeing a doctor. He said that if he goes back to Afghanistan he will be killed and if he is made to go back he will ‘do something very bad’. He said he would rather go to prison than back to Afghanistan.”

67. Ms Massey-Chase records that the appellant has often said that return to Kabul is unsafe; she believed that he genuinely feared for his safety in the whole of Afghanistan and found it hard to see any prospects for him there, with no home, no job, no way of supporting himself and no support network ‘as he will not be able to contact anyone he knows for fear that his life would be endangered’. He worried about his safety, but also that of his mother and sister.
68. During 2014, the appellant had a ‘worrying and upsetting experience’: he met another young Afghan man at a party and found himself lying about where he was from and his full name, because he was worried what would happen if someone in Afghanistan found out where he was. If he had to continue lying in that way in Afghanistan, Ms Massey-Chase feared ‘a huge impact on his mental health and well-being’.
69. Ms Massey-Chase considered the appellant to be a ‘fantastic mentee’ and an asset to British society. She had supported him while he built a network of friends, had a long-term relationship, enjoyed participating in the work of different charities, studied hard, and took pleasure in his education. She enclosed a small selection from his written work to show how much progress the appellant had made.
70. In answer to supplementary questions from Mrs Head, for the appellant, the witness said that the appellant had previously been supported by CAMS and in that context, he had meetings with Ms Massey-Chase as a mentor and social worker, offering ongoing support. She had continued to support him informally after that role ended. The appellant had attended lots of voluntary charitable groups. The appellant was doing very well at present, not self-harming and proactively supporting others, because he had been helped himself. All that was down to the support network he had in the United Kingdom, which the witness did not believe he would have in Afghanistan.
71. She considered that returning the appellant to Afghanistan would have a huge effect on his mental health. He became distressed and upset every time the possibility was discussed. The appellant had told her that he would rather go to prison. His mental health would deteriorate: the appellant would be a risk to himself and she would have a strong concern for his life, or that he would self-harm. (I observed that at this point in her evidence, the appellant was crying quietly at the back of the room and holding his partner’s hand).
72. The witness said that she remembered the appellant speaking of meeting a person from Afghanistan and concealing his surname, because it would identify where he was from. Her understanding was that on return, people would want to know where the appellant had been and what he had been doing. If that was true, and she believed it to be so, then the witness would be very worried about the appellant being returned.

73. In cross-examination, Ms Massey-Chase explained how she supported the appellant informally after her role had ended. They would talk on the telephone and exchange text and Facebook messages. She had had extended telephone calls with the appellant several times in the last few months. When there was a hearing which Ms Massey-Chase was attending, or when she visited her sister in London, they would go out for lunch. The witness felt that she had an ongoing role to support the appellant. If necessary, the Refugee Support Network would give support to her so that she could continue to help the appellant.
74. If the appellant were in Kabul, the witness was unsure whether he would have access to technology; if there were a way of sending messages to him, whether by text, Facebook, email or some other way, she would certainly do so. However, the witness feared that the appellant himself might be reluctant because he might be worried about the risk of contacting people in the United Kingdom. She said he was a friendly person, 'really lovely'.

Laura Toal

75. Ms Toal is the appellant's social worker allocated by London Borough of Barnet. She adopted her letter of 29 October 2015 as her evidence in chief. Ms Toal said that she had worked with the appellant for almost 2 years, first when he was a looked after child under the care of London Borough of Barnet, and then while he received support services under the Children (Leaving Care) Act 2000. He was extremely pleasant, articulate, and bright.
76. The appellant was making good educational and social progress. His relationship with his partner was a factor: as his social worker, Ms Toal believed that the relationship was stable and mutually supportive. The appellant was studying Entry Level 3 ICT and English and Level 1 Maths at Barnet and Southgate College. Even allowing for his reporting appointments at the Home Office, he had managed a 96% attendance last year, with 98% so far this year.
77. Ms Toal stated that the appellant was consistent in his engagement with support services and responded well to counselling provided by the Child and Adolescent Mental Health Services. There is much in her letter which is positive. The appellant engaged well with the Refugee Support Network and his mentor, Rebecca Massey-Chase. He attended all events at the Leaving Care service and assisted in the delivery of its Summer Barbecue event, as well as being involved in many volunteer projects. He helped other young people frequently, giving up time to help friends to move house and decorate their accommodation. The appellant received the Jack Petchey Award as the most helpful and inspirational resident across all the supported housing schemes managed by Housing Plus. He also spoke at the Houses of Parliament as part of a Young Roots event (Young Roots is a youth refugee charity).
78. The following concerns were expressed in Ms Toal's letter:

"[The appellant] is a particularly vulnerable young person, with a history of panic attacks, self-harm and suicidal ideation. Due to his low mood and anxiety, [the appellant] requires

significant emotional support. This is reflected by the decision of the local authority to continue to fund [the appellant] in a supported housing placement, for 11 months after his 18th birthday. The usual expectation is that young people move to independent Temporary Accommodation immediately after their 18th birthday. It was considered necessary to extend the time in supported housing in [the appellant's] case, due to the high level of concern around his emotional vulnerability. ...I am firmly of the belief that if [the appellant] was forced to return to Afghanistan, then he would be at serious risk of a major deterioration in his mental health. He has no family in Kabul and I am not aware of appropriate support services in the city that could provide him with the emotional and psychological support he would need should he have to return. ..."

79. In answer to supplementary questions from Ms Head, Ms Toal said that the appellant used to have suicidal ideation, but had been taught strategies over a period of 18 months, and provided with an extensive support network. Even in the United Kingdom, the witness remained concerned that the appellant's mental health might deteriorate if he were told he had to return to Afghanistan. If he did return, her opinion was that he would deteriorate rapidly. He would not cope very well at all and had stated that he would kill himself.
80. In cross-examination, Ms Toal said that unusually, because of his fragility, the appellant had been given an extra year of supported and housing in specialist, supported accommodation for young unaccompanied asylum seekers. Since then, in July 2015, he had been moved to independent accommodation. He still received support from Ms Toal, and the accommodation was still paid for. Ms Toal still gave the appellant more intensive support than to other young asylum seekers; she was seeing him once or twice a month, and they would deal together with official letters.

The appellant's partner

81. The appellant's partner was present during the Upper Tribunal hearing. She did not give oral evidence. I do not use her name in this decision, given the anonymity order we have made, and because she is herself a vulnerable person, who has some mental health problems of her own.
82. The appellant's partner is an English teacher at Paiwand Afghan Association (Paiwand), an organisation which is described in more detail below in connection with a letter of support which it provided. She has two children aged 13 and 9, who live in the same street as she does, with her parents. Their father sees the children monthly. The appellant's partner said in her statement that she saw her children daily but did not live with them.
83. The appellant's partner in her witness statement explained that that in December 2012 some young Afghans from Paiwand introduced her to the appellant, and that at first they were just friends. However, she stated that on 15 October 2015 they began a relationship. That may be a typographical error for 15 October 2013, since there is reference later in her statement to a 2-year anniversary occurring on 15 October 2015. The appellant's partner she understood what the appellant was going through because of her own mental health difficulties, and she supported him as much as she could.

He would wake in the night, and often had nightmares, speaking in Pashtu or Dari, waking up sweating, disorientated, and scared. On one occasion, he said in Dari, 'I am dying'.

84. The appellant and his partner do not live together, although the possibility was under discussion. The appellant had met his partner's parents, her sister, and another friend. His partner stated that she could not go to Afghanistan if the appellant were removed, because she had her children, her parents, other family members, and her work here. She was upset thinking about it: if the appellant went back to Afghanistan their relationship would end, and his partner believed that there was a very high risk that the appellant would be killed.
85. The appellant's partner stated that she was very concerned about the appellant's reaction to being returned:

"...He has told me on more than one occasion that he would kill himself if he were removed back to Afghanistan. [The appellant] is very impulsive and I don't know what he would do. He has told me that he would rather kill himself here than going back to Afghanistan and being tortured and killed in a horrible way by the police or Taliban. This is obviously of great concern and worry for me."

Brent Adolescent Team (CAMHS)

86. The appellant was referred to the Brent Adolescent Community and Mental Health Service (the Brent Adolescent CAMHS) by the Brent Home Treatment Team, after he presented at Accident and Emergency having had a loss of consciousness which he described as a 'funny turn', brought on by thinking about his past. No medical basis was found. He was referred to the Brent Adolescent CAMHS and assessed by a locum consultant psychiatrist and a family therapist, in early 2013. They found that he met the diagnostic criteria for PTSD. His individual therapy for PTSD with Dr Lindsey Wood, Clinical Psychologist, began on 31 March 2013 and Dr Wood saw him approximately every 2 weeks thereafter.
87. On 12 July 2013, Dr Wood wrote an interim report to the appellant's solicitors, noting that she was using Narrative Exposure Therapy and strategies to stabilise his PTSD symptoms. She was still meeting him once a week, or once a fortnight. The appellant remained visibly distressed about past events in Afghanistan and fearful that he would be killed if returned. The ongoing fear of return made it difficult to successfully address the PTSD symptoms. The appellant had described 2-3 'funny turns' in which he had fallen down and lost consciousness, as well as a number of episodes of fast heartbeat, pins and needles, where he did not lose consciousness. A number of medical investigations had found no organic cause for these episodes.
88. The appellant had self-harmed on one occasion in the United Kingdom, and once on his journey here, as 'he did not know how else to cope with his symptoms' but he reported that it had not helped. The appellant had threatened to kill himself if his asylum application failed, since if he did so in the United Kingdom, his mother would not know and would not be distressed by his death, whereas if he returned home, 'the

enemies' were likely to kill him in front of his family or return his body to the family, causing them distress.

89. On 17 March 2014, Dr Wood wrote to the appellant's GP to report on the appellant's progress, before going on maternity leave. His care would be taken forward by Dr Anna Whitton, who would meet the appellant 3-weekly in future.
90. Dr Wood reported that she had explored with the appellant his history of 'funny turns', which involved fast heartbeat, pins and needles, and sometimes falling down and losing consciousness. No organic cause had been found, but they seemed to be triggered by thoughts of the past or his family. The other presenting problem was self-harm, for which Dr Wood helped the appellant develop strategies. Dr Sofia Manolesou, a consultant child and adolescent psychiatrist, had met the appellant to see whether medication was appropriate or likely to help. So far, it had not been found to be appropriate.
91. The appellant's emotional wellbeing had improved with treatment. His 'funny turns' had reduced in frequency, there were fewer PTSD symptoms, and Dr Wood considered it unlikely now that he would meet the diagnostic criteria. Self-harm had also reduced, and apart from an episode in early March 2014, he had not self-harmed for over 6 months. He had no current suicidal ideation, continued to attend college daily, and was involved with the refugee youth council and other young people living, like the appellant, in semi-independent accommodation. Dr Wood considered that he was likely to deteriorate if his asylum claim failed.
92. On 29 July 2014, as the appellant was now almost 18 years old, Dr Whitton and Dr Manolesou jointly referred him to the adult Brent CAMHS Assessment and Brief Treatment Team for 'ongoing risk management and therapeutic support'. When the appellant turned 18 in August 2014 he would no longer be eligible for CAMHS support from the Brent Adolescent CAMHS team. The referral letter stated that the appellant had been receiving regular support from Dr Whitton every 3 weeks. His mood had become more stable over time, except when he talked about his family, which made him 'very distressed'. When preoccupied with thoughts and worries about his family, he would become very low and think of self-harm. He had self-harmed only twice since March 2014.
93. The appellant had recently learned that his asylum application was refused. In the past, he had spoken of ending his life if his application were refused, but had made no plans nor expressed any intention to act on those thoughts since learning the outcome of his application, although he was now very frightened and preoccupied with his fear of what might happen to him on return to Afghanistan. He was on a summer break from college, which made his distress worse as there were fewer distractions and he spent more time alone. Dr Whitton and Dr Manolesou considered the appellant to be at high risk of self-harm and increased thoughts of suicide and asked for an urgent psychiatric assessment. They believed that he would benefit from ongoing emotional support during 'this period of instability'.

Dr Juliet Cohen

94. Dr Juliet Cohen MA MBBS DipRACOG MRCGP FFFLM is an experienced writer of medico-legal reports and has worked with the Medical Foundation for the Victims of Torture (now Freedom from Torture) for a number of years. Her report is dated 6 November 2014 and was based on an interview on 27 October 2014, by which time the appellant was 18 years old.
95. Dr Cohen has assisted the Upper Tribunal in a number of recent appeal decisions, some of them country guidance cases. She is the Head of Doctors for the Medical Foundation Medico-Legal Report Service. Dr Cohen's curriculum vitae, attached to her report, cites two relevant publications: *Errors of Recall and Credibility-can omissions and discrepancies in successive statements reasonably be said to undermine credibility of testimony?*¹ and *Safe in our Hands? A study of suicide and self-harm in asylum seekers in the United Kingdom in detention and in the community*². A further paper entitled *Intentional burn injury – a changing pattern of torture in Sri Lanka* is described as 'in press'.
96. Dr Cohen's report notes that the appellant had a healthy childhood with no significant illness or injury, during which he attended school for about 5 years. He recalls no significant physical punishment at home or at school. The history of the appellant's traumatising is set out, including the possibility that the appellant hit his head on at least one occasion and may have been concussed.
97. The appellant presented as a neatly dressed young man, shaky at first, anxious and nervous throughout the examination, with low mood and affect, sometimes deeply distressed during the interview. He behaved appropriately, using detailed gestures and re-enactment of posture when describing the index events. He had no abnormalities of thought or speech and no evidence of psychosis. He had poor sleep and appetite, but 'fair' memory and concentration during the examination. He was self-harming, but did not have any specific plans to kill himself.
98. Dr Cohen applied the Istanbul Protocol and noted a number of lesions on the appellant's body, the majority of which did not show signs of being within 6-12 months of causation. There was a head scar on his right temple, which as the appellant had a history of episodes of loss of consciousness, might have been caused by falling when unconscious, or by a blow from a gun butt or other blunt object, or being pushed against a wall. It might also be purely accidental: it was not possible to give relative likelihood for these causes. The report separates the lesions not due to assault, those the appellant could not recall, and those due to self-harm, and records that the appellant 'readily identified' which was which.
99. Dr Cohen considered the marks which the appellant identified as being connected with his torture as highly consistent with the account given. She did not consider that the appellant had any tendency to exaggerate or embellish his account. The episodes of loss of consciousness had left him with some ongoing memory impairment and difficulty controlling his temper, which was not an uncommon sequel to head injury. Dr Cohen recommended that the appellant be investigated for possible epilepsy.

¹ Medico-Legal Journal 2000, Vol 69(1), International Journal of Refugee Law 2001 (reprinted)

² Journal of Forensic and Legal Medicine Vol 15 Issue 4, May 2008

100. The appellant's memory was further affected by his general psychological condition and his poor sleep. He tried to avoid watching news of Afghanistan, television, or cramped or crowded spaces; the appellant self-harmed when distressed, despite making some headway in counselling, and remained generally anxious and sometimes tearful. Dr Cohen was satisfied that the appellant met the diagnostic criteria for PTSD under ICD-10, based both on his history and her observations of him during the examination, both physical and mental. She had considered, but rejected, the possibility that the appellant was fabricating his psychological symptoms. He had been repeatedly assessed as needing specialist help by clinical professionals involved since he arrived in the United Kingdom.

101. Dr Cohen's conclusions are set out at paragraphs 63-65:

"63. [The appellant] has made some clear progress since his therapy in the United Kingdom but remains highly symptomatic. I strongly recommend that he continue with therapy here. I have no knowledge of his ability to access such specialist therapy in Afghanistan and in addition, it must be considered that returning to the place where he suffered his traumatic experiences is highly likely to trigger much greater frequency of intrusive recall and flashbacks and thus greatly exacerbate his condition and increase his self-harming behaviour.

64. I note from the clinical records that his symptoms have fluctuated over the course of time, as they are known to do in this condition. I confirm that at the present time he is still suffering from PTSD and the ref in paragraph 15 of the Home Office decision letter that he is no longer suffering from it is now outdated.

65. [The appellant] continues to self-harm [and has done so extensively, as can be seen in the body chart appended to this report. Even superficial self-harming injuries raise the risk of suicide in the future, compared to someone who has never self-harmed and I regard [the appellant] therefore as at low risk now only because he has no specific plan, but vulnerable to a much greater risk in the future should his situation change and he become overwhelmed with anxiety and fear. He states that he fears both further arrest and torture and being killed by his father's cousin, as was threatened and these fears are clearly deeply held and very real to him, being strongly linked to the highly traumatic experiences and losses he describes."

Other evidence

102. Letters of support were provided from Barnet Southgate College, Housing Plus Limited, and Paiwand. Barnet Southgate College is an educational establishment with 4 London campuses, where the appellant is pursuing additional English language, Numeracy, and ICT studies, on Saturday mornings. Housing Plus Limited provides 'Quality Assured Refugee Accommodation', according to its stationery, and the appellant was referred to it for accommodation on 14 November 2012.

103. Paiwand is an Afghan community association in London, whose stated aims are:

"...to unite our refugee community and improve the quality of our community's life in its new homeland, here in the United Kingdom....through the provision of advice and support

in respect of health issues, social services, education, counselling, career advice, translation services, welfare support, advocacy and legal issues and the promotion of Afghan arts, culture and traditions, as well as our native Pashto and Farsi languages – for people of all ages in our community – irrespective of their creed, spiritual and political beliefs or their social background.”

104. The letter from Paiwand, written in February 2014, confirmed that the appellant was attending Elementary Level 1 ESOL on Saturdays and as an active member of Paiwand’s youth group, with a ‘high interest in history’. He had made a number of good friends in the Afghan community and among other refugees, and was working hard on his English. There is no mention of what was then his new relationship with his partner. The letter continued:

“[The appellant] is from the province of Kunduz in North East of Afghanistan: the situation in this area highly unstable and unsecure, hundreds of Taliban, Chechen and Arab insurgents attack local people and government services, commit crime on daily basis; they extensively recruit local young people to fight the local police forces. There is a high risk for [the appellant] being forced to join the Taliban groups or killed would he be moved back to Afghanistan.”

105. The letter from Housing Plus in March 2014 adds little to what is already known about the appellant, that he is polite, respectful, consistent in attending meetings regularly and on time, and ‘has emerged as trustworthy and reliable’. He has shown ‘determination and commitment’ to his studies and the issues with which he struggles. The writer, Mr Ampofo, confirms his understanding that the appellant has experienced panic attacks but is engaging well with the professionals seeking to support him and give him strategies to minimise his anxiety and self-harm.

106. The letter from Barnet Southgate College confirms the appellant’s current study pattern of basic literacy and numeracy and ICT. The author, Oziem Y Olcay, described as ‘ESOL Lecturer’ assessed the appellant thus:

“[The appellant] is an asset to the class, he is a very hard-working student, and even in a short period of time that I have known him he has made a good progress, and I have formed a favourable impression of him. He is reliable and able to work well on his own and his fellow students.

I believe [the appellant] is very capable of achieving his educational and career goals, and he will make a valuable contribution the British society.”

It is unclear from that letter how long the writer has worked with the appellant.

Country evidence

107. The country information included in the appellant’s bundle consisted of two expert reports, the first from Dr Liza Schuster on 31 October 2015, and the second from Dr Antonio Giustozzi on 11 November 2015, as well as 122 pages of generic country information, little of which is immediately related to the appellant’s circumstances.

Dr Liza Schuster [31 October 2015]

108. Dr Schuster is a Reader in the Department of Sociology at City University, London, and a former researcher at the University of Oxford and the London School of Economics. She spent September 2013-July 2015 as a guest researcher and lecturer at the Afghanistan Centre at Kabul University. She has been visiting Afghanistan since July 2011 and has spent in all 28 months in Kabul, 3 months in Baghlan Province, as well as visiting Mazar-i-Sharif, Samangan, Herat, Islam Qala, Parwan and Kapisa. During her research she interviewed recently returned Afghan nationals and their family members, Afghan government officials, INGO representatives, journalists, members of diplomatic missions, and members of the Afghan police and military.
109. Dr Schuster's evidence supports the First-tier Tribunal's finding that there is a risk in the appellant's home province of Kunduz, and that it is extremely dangerous to travel there. Approximately 20000 families were displaced after the Taliban attack on Kunduz. In February 2015, the Afghan Minister for Refugees and Repatriations wrote to a number of European states asking them to suspend forced repatriation. He repeated this in October 2015 during an interview with Deutsche Welle.
110. In Kabul, there is insecurity caused by the insurgency. There is a culture of impunity (see Human Rights Watch '*Today we shall all die: Afghanistan's strongmen and the legacy of impunity*', published 3 March 2015). The UNAMA 2015 Mid-Year Report on Protection of Civilians in Armed Conflict recorded a decrease in civilian deaths but an increase in civilian injuries in Afghanistan in the first half of 2015.
111. The report cites an UN Security Council Report to the General Assembly:

"18. Overall, incident trends remained unchanged, with armed clashes accounting for the majority of security incidents (53 per cent), followed by improvised explosive devices (26 per cent). Attempts by anti-Government elements to exert influence through fear and intimidation resulted in a continued high level of targeted killings. In the reporting period of 1 May to 31 July, 291 assassinations and attempted assassinations were recorded, an 11.4 per cent increase compared with the same period in 2014. Anti-Government elements also continued to undertake high-profile attacks in the country's capital and in provincial capitals. Although they ostensibly targeted the Government and international forces, the brunt of the attacks continued to be borne by civilians. Significant attacks in the first part of the reporting period included one on the National Assembly on 22 June and attacks on international military convoys in Kabul on 30 June, 7 July and 22 August, as well as suicide attacks on Afghan military and Government targets in the provincial capitals of Kandahar (25 May), Jalalabad (31 May), Lashkar Gash (30 June) and Host (12 July). Following the announcement of the death of Mullah Omar, the city of Kabul experienced a string of attacks between 7 and 10 August, including suicide attacks in the vicinity of an Afghan National Army base, the police academy, an international military base and Kabul International Airport, which resulted in over 55 individuals killed and over 330 injured." *[Italics added]*

The words in italics are not included in the paragraph as cited by Dr Schuster. The reference to 'targeted attacks' is relevant to the overall assessment of risk in Kabul.

112. The report notes that the Afghan President, Ashraf Ghani, has made apparently conflicting statements about the available domestic protection in Afghanistan and in particular in Kabul, stating on 21 March 2015 that he 'continues to have the utmost confidence in the ability of the Afghan National Security Forces to meet the country's ongoing security issues head on' but on World Refugee Day, 20 June 2015, that 'due to the current unstable situation of Afghanistan, please stop the forced deportation of Afghans'. The United Kingdom government is said to have been seeking to put persuade the Afghan government to stop making public statements about not deporting Afghans.

113. Dr Schuster's report does not deal with mental health facilities in Kabul.

Dr Antonio Giustozzi [11 November 2015]

114. Dr Giustozzi is a senior visiting research fellow at the War Studies Department of Kings College London, and holds a PhD in International Relations from the London School of Economics. He has published widely on Afghanistan and has assisted the Upper Tribunal in a number of previous appeals, including some country guidance appeals. His report also notes the serious deterioration in Kunduz between 2008 and 2010, with Pashtun areas greatly affected by the Taliban insurgency. Paragraph 4 of his report sets out the gravity of the situation in Kunduz in some detail. He is aware of wide discussion, especially in the German press, about the oil tanker incident.

115. At paragraph 15 and following in his report, Dr Giustozzi sets out the pattern of targeted attacks in the Afghan capital, noting that:

"15. There is significant infiltration of insurgents in a number of southern and western districts of the capital, which are populated by Pashtuns from the neighbouring provinces. Exploiting the Pashtun traditions of hospitality as codified in the Pashtunwali tribal code, militants obtain hospitality from relatives and tribesmen in the settled areas of the capital and are gradually building up a network there. Both ISAF and the Afghan National Directorate of Security (NDS) have information about this but found it difficult to intervene because they feared that mass arrests could unleash a backlash from the local population. ..."

116. Dr Giustozzi concludes that in Kabul, the risk to the appellant from the Taliban would be limited to those areas where the Taliban has a significant presence. He would have been arrested to force his fugitive brother to reappear and hand himself over: as the brother is still at large, Dr Giustozzi considers that a repetition 'cannot be ruled out'. His report records the climate of impunity also mentioned in Dr Schuster's report, and the efforts made by the Afghan government to slow the forced return of Afghan citizens during this period of instability.

117. Relocating to Kabul would not be easy: Dr Giustozzi says that without family support, the appellant would be unlikely to be able to earn enough to provide a home and food for himself. Young labourers often share a flat or house, sometimes 4 to a room. The cheap accommodation is in unsafe areas infiltrated by the insurgents. More central, safer areas do not offer such accommodation at a reasonable price.

118. There is relatively little labouring work around, and unemployment was 56% in 2014, higher than in previous years. Young men are being driven to crime in Kabul. The Afghan currency had been devalued by 200% in the 18 months before Dr Giustozzi wrote his report.
119. Turning to mental health provision, there is only one mental health hospital, in Kabul, which is in bad condition due to war damage and lack of maintenance and equipment. In 2011, it had 60 beds. In 2010, there were only 2 fully trained psychiatrists in the whole of Afghanistan, a few psych nurses, and no trained psychologists. 40 more psychiatrists and psychologists had received partial training. In early 2010, the National Health Strategy was revised to give more space to mental health care, focusing on additional mental health care awareness training for existing staff and training psychosocial counsellors, but this led to abuse of psychotropic drugs, with an estimated 30% of the population taking them and abusing them. These drugs (mainly tranquillisers) were imported from Pakistan, mostly illegally. Patients were addicted to them and paid privately for them.
120. By 2012, there were still 60 places in the Kabul hospital, and now 6 trained psychiatrists and 30 other doctors with some mental health training. Dr Giustozzi's understanding is that admission to that hospital requires a patient to be accompanied by a member of their family at all times (sourced to the Royal College of Psychiatrists, Network News from Kabul, and vol. 27 of *European Psychiatry*). The World Health Organisation estimated in 2010 that about 60% of Afghans suffered various mental health problems.
121. The situation now is marginally better, since the European Union is supporting the rehabilitation of the Kabul mental hospital and has paid for the construction of a new building. The capacity has not increased from 60 beds. There is counselling available in small clinics around the country, but in Kabul they are few and far between and attending them could seriously disrupt attending school or work. Kabul hospital gets \$100 worth of medicines a month, for 2,500 mentally ill patients under its care: patients have to pay for such medicine as is available to them. Up to half of all medicine in Afghanistan consists of counterfeit drugs from Pakistan: pharmacies mostly do not have even one pharmacist, though the law requires it.
122. There are no supervised care hostels for mental health patients in Afghanistan. In Kabul and Herat, there are 16 psycho-social centres which provide some element of counselling for PTSD and depression, but consistent support in these centres is very difficult. The treatments the appellant is receiving are unlikely to be available there. There are approximately 2 million mentally ill people in Kabul alone, 40% of all those living in the city. If the appellant has no relative to take him to hospital and accompany him, and no money to live in Kabul, even the limited treatment in Kabul will in practice be unavailable to him.
123. The appellant would not suffer discrimination for the common experience in Afghanistan of being depressed, but if his 'funny turns' recurred he might be regarded as possessed by djinns or spirits, since Afghan people do not understand epilepsy.

Suicide attempts are poorly regarded, as in all Muslim countries: the appellant might be interned or discriminated against as a result. Dr Giustozzi considered that the appellant's chances of employment would be decreased by his mental health difficulties, making it still less likely that he could survive in Kabul and access treatment.

Submissions

124. In submissions for the respondent, Mr Nath relied on the skeleton argument filed on her behalf. The respondent accepted, to the lower standard appropriate in assessing international protection claims, that the appellant's uncle and brother were killed in a NATO airstrike as described; that he had a cousin who was a Taliban Commander; that his father had been killed in a suicide attack at the district chief's office in 2011; and that the appellant and his brother were arrested and tortured by the police as a consequence of that attack. The respondent did not accept that the appellant or his brother were members of the Taliban, or that there was a risk to the appellant on return to Afghanistan.
125. The respondent relied on *MAB* (paragraph 399: 'unduly harsh') United States [2015] UKUT 435 (IAC) which held that the consequences for an individual were unduly harsh where they were inordinately or excessively so, taking into account all the circumstances of the individual. The same point was made in *Naziri & others v Secretary of State for the Home Department* (JR - scope - evidence) IJR [2015] UKUT 437 (IAC).
126. The safety of internal relocation to Kabul was considered in *RQ* (Afghan National Army, Hizb-i-Islami, Risk) Afghanistan CG [2008] UKAIT 00013 in which the Tribunal had held that 'the safety of internal relocation in Kabul is a question of fact based on the particular history of an individual appellant and of the warlord or faction known to be seeking to harm him'.
127. The appellant's brother had killed a man: the state was entitled to investigate that death, and the appellant had been released after being questioned. He had no problems during the 2 months he spent in Faryab. The respondent accepted that there was a risk from the Taliban in the appellant's home area, but not in Kabul.
128. The respondent relied on the report of Dr Schuster as to his confidence in the Afghan security forces. She relied on paragraph 2.3.3 of the December 2010 UNHCR 'Eligibility Guidelines for Assessing the Internal Protection Needs of Asylum Seekers from Afghanistan' which indicated that in certain circumstances, single males might subsist in urban and semi-urban areas without family or community support, if there were established infrastructure and effective government control.
129. In relation to the appellant's health, the Secretary of State submitted that the re-diagnosis of PTSD should not be accepted and that his current condition should not add any additional weight. There was a specialist psychiatric hospital in Kabul and medical facilities were available if the appellant suffered a relapse.

130. The appellant could not bring himself within Appendix FM of the Rules and had only a limited private life interest in the United Kingdom. There were no other exceptional circumstances.
131. In oral submissions, Mr Nath observed that the appellant's fear came from the media, rather than from direct information. There were psychiatric facilities in Kabul. The appellant's evidence at the hearing that he feared being considered 'rich' and being kidnapped was not the basis on which the case had previously been advanced.
132. Section 55 no longer applied to him as he was now an adult. He had been educated in England and had transferrable skills which he could use to begin again in Kabul on return.
133. For the appellant, Mrs Head relied upon her skeleton argument. The risk of harm in the appellant's home area of Kunduz was accepted: Kunduz was a Taliban stronghold and had recently been the subject of NATO intervention.
134. It was unduly harsh to expect this appellant to relocate to Kabul. He had suffered a previous detention, was extremely vulnerable and there was a risk of re-detention. It was likely that enquiries would be made of him on his return and there was nothing in the evidence before the Upper Tribunal to indicate that he would not be questioned again, in the same manner as before. The appellant would be unable to withstand such questioning. He had ongoing PTSD and a history of previous torture.
135. The appellant would rely on the UNHCR "Eligibility Guidelines for Assessing the Protection Needs of Asylum Seekers from Afghanistan" published in August 2013, as set out at [27]-[30] of *Naziri*, in particular at [30]. It was not possible for this appellant to have a 'dignified, safe and orderly' return to Afghanistan, as Minister Balkhi had suggested, and his removal to Kabul on the facts would be unduly harsh. She relied on the evidence of Dr Cohen and Dr Giustozzi and asked me to find that the asylum claim was made out and allow the appeal.

Discussion

136. There is no suggestion by any of the witnesses, and the First-tier Tribunal did not find, that the appellant is an untruthful witness, although by reason of his mental health problems, his memory is sometimes poor. I approach this appeal on the basis that he is a witness of truth, who has been detained and tortured in Afghanistan and who has lost family members in the conflict. I accept the evidence that he has PTSD and depression; that he has occasional suicidal ideation but no plan to kill himself; that he has self-harmed in the past, and that he is sustained in the United Kingdom by a complex network of support, extended beyond the usual period by reason of his mental fragility. He does work hard at his studies: I accept the appellant's evidence that he does so to keep thoughts of Afghanistan and his family's fate away, and also that he manages less well in the college holidays. He is not working and is not presently able to do so, though he looks forward to being employed in due course, if he is allowed to stay.

137. The new evidence of the appellant's relationship with his partner is supported by all of the agencies working with him. It should have been disclosed long ago, but that is no reason to reject it as not genuine. I accept therefore that he is in a relationship which has lasted for over 2 years with an older British woman, who supports him, but that they do not yet live together and are not in a position to marry, though they have discussed both possibilities.
138. The respondent accepts the core of the appellant's account, and in particular, that the appellant has a well-founded fear of persecution for a Refugee Convention reason from 'those with Taliban links in your local area'. She does so on the basis of perceived political opinion, but perhaps a better analysis is that the appellant is a member of a particular social group which is at risk (his family), such that his own political opinion is of no relevance. As there is a risk in the home area, it is necessary to assess whether the appellant can relocate elsewhere in Afghanistan without it being unduly harsh or unreasonable for him to do so.
139. Only Faryab and Kabul were advanced by the respondent as possible internal relocation options. On the evidence, Faryab is not suitable: the appellant's aunt does not live in Faryab, as the refusal letter states: rather, for a time her husband moved between there and Kunduz province for work. That is not an internal relocation option for the appellant.
140. The live issue therefore is whether the appellant can exercise an internal relocation option to Kabul. He has no family there and would lose the support he has in the United Kingdom, both personal and institutional.
141. The appellant is a vulnerable person: he has suffered torture by the Afghan authorities in the past and I remind myself that pursuant to paragraph 339K of the Immigration Rules:
- "339K The fact that a person has already been subject to persecution or serious harm or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated."
142. In this case, the appellant has suffered torture. Torture is persecution; serious harm was caused to him. The evidence before me indicates that the situation in Kabul remains unstable and that the appellant remains very vulnerable and certainly unable to withstand any questioning should he be challenged on return. I do not find that there are good reasons to consider that the persecution or serious harm will not recur: the appellant remains a member of his family and his brother remains at large.
143. As regards the health issue, the evidence is that there is some limited mental health care in Kabul, with 60 beds in Kabul Mental Hospital and some 2500 individuals being cared for in the community, including some limited counselling services available. Given the high level of care which the appellant has needed in the United Kingdom to prevent him from self-harming, that is not sufficient to protect him, particularly given

the instability in the city, and his origin from a Taliban stronghold (as well as his identifying family name).

144. The country evidence indicates that young men with no family support will have difficulty in securing housing, employment and so on in Kabul. The personal evidence is clear that the appellant is not a man who will be able to withstand such pressures: he remains fragile, and has little or no experience of looking after himself.

145. I note that when assessing the position of vulnerable people under the Memorandum of Understanding in *Naziri*, Mr Justice McCloskey said this:

“86. The open textured language and inexhaustive terms of the definition of vulnerable people contained in the MOU and supplementing NVs has the potential to give rise to debate in individual cases. Thus, for example, a physically or mentally handicapped adult would be expected to contend that they are exempted from repatriation on account of their specific vulnerability. .. These reflections serve to highlight that every case will be unavoidably and intensively fact sensitive.”

146. This appellant has significant, albeit intermittent, mental health difficulties. I am satisfied, on the facts of this appeal, that it would be unduly harsh for this appellant to return to Afghanistan and exercise an internal relocation option in Kabul.

Decision

The First-tier Tribunal made a material error of law.

I set aside the decision and remake it by allowing the appeal on asylum and human rights grounds.

Date: 6 May 2016

Signed: *Judith A J C Gleeson*

Upper Tribunal Judge Gleeson