



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/02560/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 11 June 2018

Decision & Reasons Promulgated  
On 10 August 2018

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

AKA  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr B Bedford, Counsel instructed by Sultan Lloyd Solicitors

For the Respondent: Mr S Kotas, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Afghanistan. His date of birth is 1 January 2000. He came to the UK on 28 August 2013 aged 13 years. He made a claim on 11 September 2013 which was refused on 31 January 2014. The Appellant was granted leave until 31 July 2016. He appealed the decision on asylum grounds. His appeal was dismissed on 16 April 2014 by First-tier Tribunal Judge Ferguson (“the first judge”). He applied for further leave to remain. The application was refused on asylum grounds on 10 February 2017; however, he was granted leave until 10 July 2017. He appealed against that decision on asylum grounds. His appeal was dismissed by

First-tier Tribunal Judge Asjad (“the second judge”) in a decision which was promulgated on 24 October 2017. The second judge dismissed the Appellant’s appeal on asylum grounds, under Article 3 and Article 15(c) of the Qualification Directive.

2. I found that the second judge did not materially err in respect of the Appellant’s appeal. I found that she had materially erred in respect of the Appellant’s appeal under Article 3 and Article 15(c) for the following reasons:-

“11. Judge Asjad found that ‘it was not accepted that the Appellant had lost all contact with his family’ and therefore he would not be returning to Afghanistan as an unaccompanied minor. It is not entirely clear upon what evidence that finding is based. The Appellant’s evidence in his witness statement of 6 April 2017 is that he has not had contact with anyone either directly or indirectly in Afghanistan (see [9] of his witness statement) and in respect of his cousin in the UK he last saw him three months ago. Judge Ferguson in 2014 found that there must be ‘some hope that tracing can eventually take place back to the uncle through the cousin and with [the Appellant’s] continuing cooperation ...’ (see [24]). Whether the Appellant who was aged 17 and 9 months at the date of the hearing before Judge Asjad was in contact with his family is a material consideration in respect of risk of return under Article 3 and 15(c) in respect of return to his home area and Kabul. I conclude there is no adequately reasoned finding on the issue. This amounts to a material error of law.”

3. The Appellant was a child at the hearing before the second judge. He is no longer a child. At the resumed hearing Mr Bedford submitted that the date of birth used by the Appellant was a rough estimate and therefore it cannot be confirmed that he is aged 18, although it is accepted that he is in his 18<sup>th</sup> year.
4. It is accepted that he is from Baghlan Province. The Appellant’s asylum claim was dismissed by the first judge and the second judge. It was not accepted that his brothers and father were killed by the Taliban and that they worked for the government. The Respondent does not accept that the Appellant has not had contact with family in Afghanistan.

#### *The Issue*

5. Mr Bedford confirmed that the Appellant was not pursuing an appeal under Article 15(c) on the basis that he would be at risk on return to Afghanistan of indiscriminate violence. It was accepted that he could not succeed on this basis. The sole issue was therefore whether the decision of to remove the Appellant breaches the UK’s obligations under Article 3. Mr Bedford confirmed at the hearing that there was no appeal under Article 8.

*The Evidence*

6. Before me there was an Appellant's bundle of 5 June 2018 (AB1) comprising 353 pages and the Respondent's bundle (RB). At the start of the resumed hearing Mr Bedford submitted a bundle containing a number of cases on which he relied (AB2). Both parties submitted skeleton arguments.

*The Letters from the Red Cross*

7. At the hearing before me on 11 June 2018 the Appellant adduced for the first time three letters from the British Red Cross addressed to him. The first letter was dated 31 December 2015. It indicated that enquiries started regarding the tracing that the Appellant instigated on 19 October 2015. The second letter was dated 15 June 2016 and stated that the Appellant was being written to regarding the tracing of his uncle (named in the letter) which the Appellant instigated on 15 October 2015. The third letter was dated 16 September 2016 and stated that the Appellant was being written to regarding the tracing of his uncle initiated on 15 October 2015. The Red Cross confirmed that it had no information concerning the uncle but that their enquiries were continuing.

*The Appellant's Evidence*

8. The Appellant's evidence was contained in his undated witness statement which was before the second judge. He adopted this as his evidence-in-chief. He gave evidence at the hearing before me in Pushtu through an interpreter. His evidence can be summarised. He lived in Dand-e-Ghori in Baghlan Province of Afghanistan with his mother, older sister and two older brothers. He left Afghanistan in 2013 with the help of his brother-in-law. He travelled to Pakistan where he was left in the care of an agent who brought him to the UK. He arrived here on 28 August 2013. He has had no contact directly or indirectly with anyone in Afghanistan since he left. He has a cousin in the UK (ZA) who resides in London. He last saw him (according to his undated witness statement before the second judge at the hearing on 25 September 2017) three months ago. They are not close and contact is limited. ZA has had no contact with his family in Afghanistan and has been recognised as a refugee. He has been living here for twelve years and has never travelled back to Afghanistan. The Appellant has integrated here and ZA does not approve of him.
9. The Appellant in his witness statement stated that he could not return to his home area because of fear of being killed by the Taliban. Baghlan is very dangerous. In oral evidence he stated that if he was removed to Kabul, he would not remain there. He would return to Baghlan where he used to live and where he would be at risk.
10. The Appellant did not have contact with his family. A lot of people have been displaced in Afghanistan. In cross-examination he stated that perhaps the smuggler

who brought him contacted his family to let them know he arrived, but perhaps his family is still looking for him. He did not know.

11. There would be no support for the Appellant in Kabul or Afghanistan. In the UK he had support workers, social workers and friends who help him. He would not have such support in Afghanistan.
12. He had not been asked by his solicitors to provide an up-to-date witness statement for the appeal hearing. He was asked what information he had given to the Red Cross and he stated that he told them whatever he knew about the place where he lived.
13. The Appellant wants to be a car mechanic and had successfully completed level 1. He has to complete level 3 before he can find paid work.

### Background Evidence

14. The Appellant produced in support of his appeal a report by Liza Schuster of December 2015 (page 34, AB1). At paragraph 86, she states as follows:

“86. From the research that I have conducted, and as reported in the article with Majidi (attached) there are two main reasons why those who are forcibly returned to Kabul return to their provinces of origin. The first is that where people have absolutely no links in Kabul, they do not know where to begin looking for accommodation or employment so even if they feel threatened in their home province, they hope to find shelter there until they can find somewhere else to go. The choice will be between destitution in Kabul or facing whatever risks may remain in their home province. They may be intending to seek help and support from extended family to re-migrate.

87. The second reason is that it is likely to have been some years since most saw their families. In a culture where family is so important the distance from family is often a source of enormous pain. Some will have had very negative experiences in the UK and will be hoping to find solace in their family. In some cases there will have been significant bereavements, and there will be a duty to visit parental graves. They may have a fiancée, wife or children at home. Some will hope to get back safely and spend some time with loved ones, discussing what the next step should be. Whatever the reason for leaving Afghanistan, for many – even those who have no possibility or intention of staying – the opportunity to see family, familiar faces and places and familiar foods will be irresistible and they will deal with threats when they arise. If they still have family, they will be reliant on the family to finance their next attempt to leave.”

In addition, amongst other documents in the Appellant’s bundle is the Country Information and Guidance Afghanistan: Security and humanitarian situation version 3.0 of July 2016 (page 131, AB). In particular I was referred to the following;

“7.2.1 The UNSG reported that the United Nations recorded 22,634 security incidents in 2015, a 3 per cent increase compared to 2014. Of those security incidents, 70 per cent occurred in southern, eastern and south-eastern regions, with Ghazni, Helmand, Kandahar, Kunar and Nangarhar being the most volatile provinces. The report added:

'The Taliban expanded its territorial reach in 2015, temporarily capturing 24 district centres in the north (in Badakhshan, Baghlan, Faryab, Jawzjan, Kunduz, Sari Pul and Takhar provinces), in the west (in Badghis and Farah provinces), in the east (in Nuristan Province) and in the south (in Helmand and Kandahar provinces), in addition to temporarily seizing the provincial capital of Kunduz. This represents a significant increase compared with 2014, when the Taliban captured only three centres. Even though most district centres were quickly retaken by pro-government forces, several remained until Taliban control for weeks, including Faryab, Helmand, Kunduz, Sari Pul and Takhar provinces.'

7.4.1 The US Department of Defence reported in December 2015 that:

'The Afghan government retains control of Kabul, major transit routes, provincial capitals, and nearly all district centres. The ANDSF are generally capable and effective at protecting the major population centres, or not allowing the Taliban to maintain their hold for a prolonged period of time. At the same time, the Taliban have proven capable of taking rural areas and contesting key terrain in areas such as Helmand while continuing to conduct high-profile attacks (HPA) in Kabul. From January 1 to November 16, 2015, there were 28 HPAs in Kabul, a 27 percent increase compared to the same time period in 2012.'

7.4.2 The Jamestown Foundation reported on 1 April 2016 that:

'Five months after the fall of Kunduz, Taliban forces started to focus on Baghlan, another strategically-located province in northern Afghanistan... By February, Taliban fighters had established strongholds in Dand-e-Ghori area, in the west of Pole-Khomri, in Dande Shahbuddin, in Kokchenar, and in nine other villages west of Pole-Khomri.'

At Section 8 of the COIR the humanitarian situation is considered in the context of internally displaced persons (IDPs).

15. The Appellant relied on news reports of violent incidents in Baghlan. I was specifically referred to an article entitled "Taliban brutally kill 2 public uprising members in Baghlan by gouging their eyes", a report of 12 April 2016 (page 159, AB1). Specific reference was made by Mr Bedford to the UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan of 6 August 2013, specifically to page 40 of the document (page 260, AB1) which reads as follows:

**"3. Men and Boys of Fighting Age**

In areas where AGEs exercise effective control, they are reported to use a variety of mechanisms to recruit fighters, including recruitment mechanisms based on coercive strategies. In a traditional form of war mobilization known as *lashkar*, every household is expected to contribute a man of fighting age. In areas where AGEs exercise effective control, as well as in IDP settlements in Afghanistan, they are reported to use threats and intimidation to enforce this mechanism to recruit fighters for the insurgency. People who resist recruitment are reportedly at risk of being accused of being a government spy and being killed or punished. There are reports of families linked to insurgency giving boys to AGEs as suicide bombers, in the hope of gaining status with the AGE in question.

ALP commanders have also been reported to forcibly recruit local community members, including both adult men and children, into ALP forces.

In light of the forgoing, UNHR considers that, depending on the specific circumstances of the case, men and boys of fighting age living in areas under the effective control of AGEs, or in areas where pro-government forces and AGEs are engaged in a struggle for control, may be in need of international refugee protection on the ground of their membership of a particular social group. Depending on the specific circumstance of the case, men and boys of fighting age living in areas where ALP commanders are in a sufficiently powerful position to forcibly recruit community members into the ALP may equally be in need of international refugee protection on the ground of their membership of a particular social group. Men and boys who resist forced recruitment may also be in need of international refugee protection on the ground of their (imputed) political opinion. Depending on the specific circumstances of the case, family members of men and boys with this profile may be in need of international protection on the basis of their association with individuals at risk;"

*The decision of the first-judge*

16. In relation to the issue of tracing the first judge stated in 2014 as follows:-

"9. The issue of tracing had been considered in the refusal. The Appellant knew his mother's name but very little other detail. He said that his family were no longer in Afghanistan so tracing would be difficult. There was a low burden of proof but it was still a standard to be met. If his brother's work for the government, to the degree that they were away for months at a time then it was reasonable to expect his representatives to try and get a letter from the authorities given that his brothers were said to have been murdered in the service of government. The Presenting Officer relied on TK Burundi to submit that inferences could be drawn from the lack of evidence in circumstances where it was reasonable to obtain corroborative evidence. Reference was also made to paragraphs 35 - 37 of the case AA [2012] UKUT 0016 to consider in the assessment of humanitarian protection: such a claim was not made out simply on the basis that being in Afghanistan puts him at risk. He had discretionary leave to remain until 2016.

...

23. Given his age he cannot be expected to know more than he has said, but his evidence raises a question about the various possible reasons why his mother and brother-in-law might have sent [AKA] to the United Kingdom. As was said by the Court of Appeal at paragraph 4 of AA:

'Where an applicant is indeed a child all the rights and privileges that go with that status are to be applied ... such an individual stands to gain the benefit of accommodation and maintenance ... as well as access to education.'

I note that [AKA] has a cousin in the United Kingdom whom he has not yet been able to contact, and was aware that two other people from the village had travelled to the United Kingdom (D7 question 16). It does not follow that the expense and uncertainty of his journey is motivated only by a real risk of persecution. It is not established that [AKA] requires international protection as a refugee.

24. There must be some hope that tracing can eventually take place back to the uncle through the cousin and with [AKA's] continuing cooperation the Respondent may be able to assist in tracing his cousin in the United Kingdom. Tracing his family and enabling him to return to their care would, in the circumstances, be in his best interests within the meaning of Section 55. As the well-known judgment of Lord Templeman in the context of family law in England makes clear (re KD (A Minor) (Ward: Termination of Access) [1988] 1AC 806 at P812):

‘The best person to bring up a child is the natural parent. It matters not whether the parent is wise or foolish, rich or poor, educated or illiterate, provided the child’s moral and physical health are not in danger. Public authorities cannot improve on nature.’”

#### *The Appellant’s submissions*

17. Mr Bedford made submissions in the context of his skeleton argument. He submitted that the Appellant, if returned to Kabul would not remain there. He would return to his home area of Baghlan where he would be at risk from the Taliban as a result of forced recruitment. He would be at risk of treatment contrary to Article 3 on return to Baghlan and/or Kabul.
18. It would not be reasonable to expect the Appellant to remain in Kabul applying *AS (Afghanistan)* CG [2018] UKUT 00118. He would be destitute. His qualifications are not at a level to enable him to work. He is in his eighteenth year. There is no “bright line” in respect of a when a child becomes an adult.
19. The failure by the Appellant to submit letters from the Red Cross at an earlier stage in the proceedings must be considered in the context of his age and the Joint Presidential Guidance Note No 2 of 2010 relating to child, vulnerable adults and sensitive witnesses.
20. Mr Bedford argued that *Paposhvili v Belgium* (no. 41738/10, GC) [Articles 3 and 8], 13 December 2016 effectively reversed the burden of proof in Article 3 cases (see [186] – [187]). He relied on *JK and Others v Sweden* (application number 59166/12) at [91]. He relied on *AM (Zimbabwe) v Secretary of State for the Home Department* [2018] EWCA Civ 64 where the Court of Appeal considered the effect of *Paposhvili*. All the Appellant needed to do, according to Mr Bedford was to adduce evidence capable of proving his case. It must be reasonably inferred that he has succeeded in doing this because

the application was not certified by the Respondent. In this respect Mr Bedford relied on *Kiarie v Secretary of State for the Home Department* [2017] UKSC 42. In these circumstances the burden shifted to the Secretary of State to dispel doubts about it. In this case it is arguable that the Appellant would be forced to leave Kabul therefore putting himself at risk.

### *The Secretary of State's submissions*

21. Mr Kotas made submissions in the context of his skeleton argument. The Appellant was an adult male with no medical problems. There was no evidence of vulnerability. He was in good health and would be able to obtain work and accommodation in Kabul. He relied on AS. The Appellant had vocational training. Taken at its highest the Appellant's return to Kabul would not breach the UK's obligations under Article 3.
22. In any event, the Appellant's evidence was not accepted. It was not accepted that he has not been in contact with his family. The starting point was the findings of the First-tier Tribunal in 2014. The judge did not believe the Appellant. There was no further evidence. His evidence in 2018 was simply a repetition of what he told the First-tier Tribunal in 2014. There was no reason why the letters from the Red Cross had not previously been submitted considering their potential significance. Mr Kotas asked me to find this evidence unreliable. In respect of tracing the Appellant did not give the Secretary of State a telephone number. He did not return the proforma. He has not given a cogent account of what efforts he has made in order to contact his family in Afghanistan. It is implausible that his family were not made aware of his safe arrival here. The Secretary of State in this case had discharged his procedural obligation in terms of tracing<sup>1</sup>.

<sup>1</sup>The Respondent in the Reasons for Refusal Letter in relation to the issue of tracing stated as follows:

- "34. In accordance with Regulation 6(1) of the 2005 Regulations the UK Border Agency has endeavoured to trace your family using information you provided in your screening interview, witness statement and Asylum Interview Record. The following steps have been taken and the results summarised as follows:

Action	Results
(a) Obtain and check information and documentation via the FCO in the country of return.	The following statement was issued on 27 November 2012:  "The British Embassy in Kabul does not currently have the facility to carry out tracing of the families of unaccompanied asylum seeking children from Afghanistan".
(b) Search UK immigration databases (e.g. for previous applications by family members).	No results have been found on Home Office databases from the information you have provided.
(c) Search over C's databases (e.g. for family members who have previously applied for a visa to come to the UK).	No results have been found from the information you have provided.



23. The burden of proof is on the Appellant. The case of *JK* does not reverse the burden of proof. It was unarguable that the burden of proof was now as advanced by Mr Bedford. This would be inconsistent with UNHCR<sup>2</sup> guidelines set out in *JK*. The

(d) Submit an information request to other European countries where there is evidence the child or their family may have resided there.	No information submitted.
(e) Direct contact with family members in the country of return.	You claim not to have contact with family in Afghanistan.
(f) Request additional information from the local authority responsible for your care.	Best interest proforma was sent to your social worker on 14 January 2014 however it has not been returned.
(g) Internet/social media search.	No results found from search engines.
(h) Make enquiries with UK-based relatives.	You state you have a paternal cousin in the UK however from the limited information you have provided, this person could not be found on the Home Office database.
(i) Search/trace in the (illegible) non-governmental or private organisation.	The Home Office does not currently have any arrangements or contracts in Afghanistan who are authorised to undertake family tracing.

35. Regulation 6 of the Asylum Seekers (Reception Conditions) Regulations 2005 places an obligation on the Secretary of State to endeavour to trace the members of the minor's family as soon as possible after the minor makes his claim for asylum. The following steps have been taken in order to obtain sufficient information from you to enable the Secretary of State to endeavour to trace your family; you have been asked questions regarding your family in your screening interview (SI), witness statement (WS) and your asylum interview (IAR).
36. As summarised above, actions have been taken to endeavour to trace your family. However, at this time it has not been possible to obtain information to either re-establish contact, confirm your family's current location and circumstances, or to obtain information relevant to an assessment of whether there is a prospect of reuniting you safely with your family in the event of return.
37. The Secretary of State's failure to trace your family cannot be interpreted as evidence that there are no adequate reception facilities ...".

## <sup>2</sup>II. Burden of Proof

5. Facts in support of refugee claims are established by adducing proof or evidence of the alleged facts. Evidence may be oral or documentary. Duty to produce evidence in order affirmatively to prove such alleged facts, is termed 'burden of proof'.
6. According to general legal principles of the law of evidence, the burden of proof lies on the person who makes the assertion. Thus, in refugee claims, it is the applicant who has the burden of establishing the veracity of his/her allegations and the accuracy of the facts on which the refugee claim is based. The burden of proof is discharged by the applicant rendering a truthful account of facts relevant to the claim so that, based on the facts, a proper decision may be reached. In view of the particularities of a refugee situation, the Adjudicator shares the duty to ascertain and evaluate all the relevant facts. This is achieved, to a large extent, by the Adjudicator being familiar with the objective situation in the country of origin concerned, being aware of relevant matters of common knowledge, guiding the applicant and providing the relevant information adequately verifying facts alleged which can be substantiated.

### III. Standard of Proof - General Framework and Definitional Issues

7. In the context of the applicant's responsibility to prove facts in support of his/her claim, the terms 'standard of proof' means the threshold to be met by the applicant in persuading the Adjudicator as to the truth of his/her factual assertion. Facts which need to be 'proved' are those which concern the background and personal experiences of the applicant which purportedly have given rise to a fear of persecution and the resultant unwillingness to avail himself/herself of the protection of the country of origin.
8. In common law countries, the law of evidence relating to criminal prosecutions requires cases to be proved 'beyond reasonable doubt'. In civil claims, the law does not require this high

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standard; rather the Adjudicator has to decide the case on the 'balance of probabilities'. Similarly in refugee claims, there is no necessity for the Adjudicator to have been fully convinced of the truth of each and every factual assertion made by the applicant. The Adjudicator needs to decide if, based on the evidence provided as well as the veracity of the applicant's statements, it is likely that the claim of that applicant is credible.

9. Obviously the applicant has the duty to tell the truth. In saying this though, consideration should also be given to the fact that, due to the applicant's traumatic experiences, he/she may not speak freely; or that due to time lapse or the intensity of past events, the applicant may not be able to remember all factual details or to recount them accurately or may confuse them; thus he/she may well be vague or inaccurate in providing detailed facts. Inability to remember or provide all dates or minor details, as well as minor inconsistencies, in substantial vagueness or incorrect statements which are not material may be taken into account in the final assessment on credibility, but should not be used as decisive factors.
10. As regards supportive evidence, where there is corroborative evidence supporting the statements of the applicant, this would reinforce the veracity of the statements made. On the other hand, given the special situation of asylum seekers, they should not be required to produce all necessary evidence. In particular, it should be recognised that, often, asylum seekers would have fled without their personal documents. Failure to produce documentary evidence to substantiate oral statements should, therefore not prevent the claim from being accepted if such statements are consistent with known facts and the general credibility of the applicant is good.
11. In assessing the overall credibility of the applicant's claim, the Adjudicator should take into account such factors as the reasonableness of the facts alleged, the overall consistency and coherence of the applicant's story, corroborative evidence adduced by the applicant in support of his/her statements, consistency with common knowledge or generally known facts, and the known situation in the country of origin. Credibility is established where the applicant has presented a claim which is coherent and plausible, and not contradicting generally known facts, and therefore is, on balance, capable of being believed.
12. The term 'benefit of the doubt' is used in the context of standard of proof relating to the factual assertions made by the applicant. Given that in refugee claims, there is no necessity for the applicant to prove all facts to such a standard that the Adjudicator is fully convinced that all factual assertions are true, there would normally be an element of doubt in the mind of the Adjudicator as regards the facts asserted by the applicant. Where the Adjudicator considers that the applicant's story is on the whole coherent and plausible, any element of doubt should not prejudice the applicant's claim; that is, the applicant should be given the 'benefit of the doubt'.

#### **IV. Standard of Proof in Establishing the Well-Foundedness of the Fear of Persecution**

13. The phrase 'well-founded fear of being persecuted' is the key phrase of the refugee definition. Although the expression 'well-founded fear' contains two elements, one subjective (fear) and one objective (well-founded), both elements must be evaluated together.
14. In this context, the term 'fear' means that the person believes or anticipates that he/she will be subject to that persecution. This is established very largely by what the person presents as his/her state of mind on departure. Normally, the statement of the applicant will be accepted as significant demonstration of the existence of the fear, assuming there are no facts giving rise to serious credibility doubts on the point. The applicant must, in addition, demonstrate that the fear alleged is well-founded.
15. The drafting history of the Convention is instructive on this issue. One of the categories of refugees referred to in Annex 1 of the IRO Constitution, is that of persons who 'expressed valid objections to returning' to their countries, 'valid objection' being defined as 'persecution, or fear, based on reasonable grounds of persecution'. The IRO manual declared that 'reasonable grounds' were to be understood as meaning that the applicant has given 'a plausible and coherent account of why he fears persecution'. The Ad Hoc Committee on Statelessness and Related Problems adopted the expression 'well-founded fear of persecution' rather than adhered to the wording of the IRO Constitution. In commenting on this phrase, in its final report the Ad Hoc Committee stated that 'well-founded fear' means that a person can show 'good reason' why he fears persecution.

#### **Threshold**

Grand Chamber if *JK* considered the Secretary of State's responsibilities in relation to objective and background country information and did not attempt to reverse the established standard and burden of proof. In support of his submissions he referred me to [97]- [98] and [102] of *JK* and the UNHCR 1998 Note on the Burden and Standard of Proof in Refugee Claims set out at [53]. He referred me to [41] of *AM*. He submitted that *Paposhvili* was concerned with extreme medical cases. In any event, the breach found in *Paposhvili* was procedural in nature and not substantive.

### *Findings and Reasons*

24. *N v United Kingdom* [2008] ECHR 453 is binding as recently concluded by the UT in and *EA and Ors (Article 3 medical cases – Paposhvili not applicable)* [2017] UKUT 445 and confirmed by the Court of Appeal in *AM*. In any event, I do not accept that there is a viable argument for concluding that the Strasbourg approach has departed from the domestic approach. The decisions of the Grand Chamber in *JK* and *Paposhvili* do not have the effect that Mr Bedford suggests. Mr Bedford relied on [91] of *JK*. However, this paragraph should not be taken out of context. In *JK* the Grand Chamber considered the distribution of the burden of proof and stated as follows:-

“91. Regarding the burden of proof in expulsion cases, it is the Court’s well-established case-law that it is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he or she would be exposed to a real risk of being subjected to treatment contrary to Article 3; and that where such evidence is adduced, it is for the Government to dispel any doubts about it (see *F.G. v. Sweden*, cited above, § 120; *Saadi v. Italy*, cited

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16. The handbook states that an applicant’s fear of persecution should be considered well-founded if he ‘can establish, to a reasonable degree, that his continued stay in his country of origin has become intolerable...’.

17. A substantial body of jurisprudence is developed in common law countries on what standard of proof is to be applied in asylum cases to establish well-foundedness. This jurisprudence largely supports the view that there is no requirement to prove well-foundedness conclusively beyond doubt, or even that persecution is more probable than not. To establish well-foundedness, persecution must be proved to be reasonably possible. Attached as an Annex is an overview of some recent jurisprudence, by country.

#### **Indicators for Assessing Well-Foundedness of Fear**

18. While by nature, an evaluation of risk of persecution is forward looking and therefore inherently somewhat speculative, such an evaluation should be based on factual considerations which take into account the personal circumstances of the applicant as well as the elements relating to the situation in the country of origin.

19. The applicant’s personal circumstances would include his/her background, experiences, personality and any other personal factors which could expose him/her to persecution. In particular whether the applicant has previously suffered persecution or other forms of mistreatment and the experiences of relatives and friends of the applicant as well as those persons in the same situation as the applicant are relevant factors to be taken into account. Relevant elements concerning the situation in the country of origin would include general social and political conditions, the country’s human rights situation and records; the country’s legislation; the persecuting agent’s policies or practices, in particular towards persons who are in a similar situation as the applicant, etc. While past persecution or mistreatment would weigh heavily in favour of a positive assessment of risk of future persecution, its absence is not a decisive factor. By the same token the fact of past persecution is not necessarily conclusive of the possibility of renewed persecution, particularly where there has been an important change in the conditions in the country of origin.”

above, § 129; *NA. v. the United Kingdom*, cited above, § 111; and *R.C. v. Sweden*, cited above, § 50).

92. According to the Court's case-law, it is incumbent on persons who allege that their expulsion would amount to a breach of Article 3 to adduce, to the greatest extent practically possible, material and information allowing the authorities of the Contracting State concerned, as well as the Court, to assess the risk a removal may entail (see *Said v. the Netherlands*, no. 2345/02, § 49, ECHR 2005-VI). The Court, however, acknowledges the fact that with regard to applications for recognition of refugee status, it may be difficult, if not impossible, for the person concerned to supply evidence within a short time, especially if such evidence must be obtained from the country from which he or she claims to have fled. The lack of direct documentary evidence thus cannot be decisive *per se* (see *Bahaddar v. the Netherlands*, 19 February 1998, § 45, *Reports 1998-I*, and, *mutatis mutandis*, *Said*, cited above, § 49).
93. Owing to the special situation in which asylum-seekers often find themselves, it is frequently necessary to give them the benefit of the doubt when assessing the credibility of their statements and the documents submitted in support thereof. Yet when information is presented which gives strong reasons to question the veracity of an asylum-seeker's submissions, the individual must provide a satisfactory explanation for the alleged inaccuracies in those submissions (see *F.G. v. Sweden*, cited above, § 113; *Collins and Akaziebie v. Sweden* (dec.), no. 23944/05, 8 March 2007; and *S.H.H. v. the United Kingdom*, no. 60367/10, § 71, 29 January 2013). Even if the applicant's account of some details may appear somewhat implausible, the Court has considered that this does not necessarily detract from the overall general credibility of the applicant's claim (see *Said*, cited above, § 53, and, *mutatis mutandis*, *N. v. Finland*, no. 38885/02, §§ 154-155, 26 July 2005).
94. As a general rule, an asylum-seeker cannot be seen as having discharged the burden of proof until he or she provides a substantiated account of an individual, and thus a real, risk of ill-treatment upon deportation that is capable of distinguishing his or her situation from the general perils in the country of destination.
95. Moreover, although a number of individual factors may not, when considered separately, constitute a real risk, the same factors may give rise to a real risk when taken cumulatively and when considered in a situation of general violence and heightened security (see *NA. v. the United Kingdom*, cited above, § 130). The following elements may represent such risk factors: previous criminal record and/or arrest warrant, the age, gender and origin of a returnee, a previous record as a suspected or actual member of a persecuted group, and a previous asylum claim submitted abroad (see *NA. v. the United Kingdom*, cited above, §§ 143-144 and 146).
96. The Court notes that it is the shared duty of an asylum-seeker and the immigration authorities to ascertain and evaluate all relevant facts of the case in the asylum proceedings. Asylum-seekers are normally the only parties who are able to provide information about their own personal circumstances. Therefore, as far as the individual circumstances are concerned, the burden of proof should in principle lie on the applicants, who must submit, as soon as possible, all evidence relating to their individual circumstances that is needed to substantiate their application for international protection. This requirement is also expressed both in the UNHCR documents (see paragraph 6 of the UNHCR Note on Burden and Standard of Proof in Refugee Claims and paragraph 196 of the UNHCR Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status, both referred to in paragraphs 53-54 above) and in Article 4§ 1 of the EU Qualification Directive, as well as in the subsequent case-law of the CJEU (see paragraphs 47 and 49-50 above).

97. However, the rules concerning the burden of proof should not rendering effective the applicants' rights protected under Article 3 of the Convention. It is also important to take into account all the difficulties which an asylum-seeker may encounter abroad when collecting evidence(see *Bahaddar*, cited above § 45, and, *mutatis mutandis*, *Said*, cited above,§ 49).Both the standards developed by the UNCHR (paragraph 12 of the Note and paragraph 196 of the Handbook, both cited in paragraphs 53-54above) and Article 4 § 5 of the Qualification Directive recognise, explicitly or implicitly, that the benefit of the doubt should be granted in favour of an individual seeking international protection.
98. The Court notes that, as far as the evaluation of the general situation in a specific country is concerned, a different approach should be taken. In respect of such matters, the domestic authorities examining a request for international protection have full access to information. For this reason, the general situation in another country, including the ability of its public authorities to provide protection, has to be established *proprio motu* by the competent domestic immigration authorities (see, *mutatis mutandis*, *H.L.R. v. France*, cited above, § 37; *Hilal*, cited above, § 60; and *Hirsi Jamaa and Others*, cited above, § 116). A similar approach is advocated in paragraph 6 of the above-mentioned Note issued by the UNHCR, according to which the authorities adjudicating on an asylum claim have to take "the objective situation in the country of origin concerned" into account *proprio motu*. Similarly, Article 4 § 3 of the Qualification Directive requires that "all relevant facts as they relate to the country of origin" are taken into account.
100. This issue has also been touched upon in the EU Qualification Directive and in the UNHCR documents. In particular, Article 4 § 4 of the Qualification Directive (see paragraph 47 above) provides – as regards the assessment of refugee status or other need for international protection by the authorities of European Union member States – that "[t]he fact that an applicant has already been subject to persecution or serious harm, or direct threats of such persecution or such harm, is a serious indication of the applicant'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".
101. Furthermore, this issue, which is closely linked with the general questions of assessment of evidence, is addressed in paragraph 19 of the UNHCR Note on Burden and Standard of Proof in Refugee Claims, dealing with indicators for assessing the well-foundedness of a fear of persecution, which states as follows: "While past persecution or mistreatment would weigh heavily in favour of a positive assessment of risk of future persecution, its absence is not a decisive factor. By the same token, the fact of past persecution is not necessarily conclusive of the possibility of renewed persecution, particularly where there has been an important change in the conditions in the country of origin" (see paragraph 53 above). The Court considers that the UNHCR's general approach to the burden of proof is also of interest in the present context: while the burden of proof lies with the asylum-seeker, the State official examining the asylum claim shares the duty to ascertain and evaluate all relevant facts with the asylum-seeker (see paragraph 6 of the UNHCR 1998 Note on Burden and Standard of Proof in Refugee Claims and paragraph 196 of the UNHCR Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status –cited in paragraphs 53 and 54 above). Moreover, as regards the assessment of the overall credibility of an asylum claim, paragraph 11 of the Note on Burden and Standard of Proof in Refugee Claims states that credibility is established where the applicant has presented a claim which is coherent and plausible, not contradicting generally known facts, and therefore is, on balance, capable of being believed (see paragraph 53 above).
102. The Court considers that the fact of past ill-treatment provides a strong indication of a future, real risk of treatment contrary to Article 3, in cases in which an applicant has made a generally coherent and credible account of events that is consistent with information from reliable and objective sources about the general situation in the country

at issue. In such circumstances, it will be for the Government to dispel any doubts about that risk.”

25. A proper reading of the above paragraphs does not support Mr Bedford’s argument. A reversal of the burden of proof is not what the Grand Chamber intended. The above extracts make it clear that the burden is on the Appellant, but that in certain circumstances there may be a duty on the State involved. The approach advocated by Mr Bedford was contrary to the position of the UNCHR 1998 Note on Burden and Standard of Proof in Refugee Claims and case law. The relevant paragraphs of *Paposhvili* on which Mr Bedford relied are as follows:

“186. In the context of these procedures, it is for the applicants to adduce evidence capable of demonstrating that there are substantial grounds for believing that, if the measure complained of were to be implemented, they would be exposed to a real risk of being subjected to treatment contrary to Article 3 (see *Saadi*, cited above, § 129, and *F.G. v. Sweden*, cited above, § 120). In this connection it should be observed that a certain degree of speculation is inherent in the preventive purpose of Article 3 and that it is not a matter of requiring the persons concerned to provide clear proof of their claim that they would be exposed to proscribed treatment (see, in particular, *Trabelsi v. Belgium*, no. 140/10, § 130, ECHR 2014 (extracts)).

187. Where such evidence is adduced, it is for the authorities of the returning State, in the context of domestic procedures, to dispel any doubts raised by it (see *Saadi*, cited above, § 129, and *F.G. v. Sweden*, cited above, § 120). The risk alleged must be subjected to close scrutiny (see *Saadi*, cited above, § 128; *Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, § 214, 28 June 2011; *Hirsi Jamaa and Others*, cited above, § 116; and *Tarakhel*, cited above, § 104) in the course of which the authorities in the returning State must consider the foreseeable consequences of removal for the individual concerned in the receiving State, in the light of the general situation there and the individual’s personal circumstances (see *Vilvarajah and Others*, cited above, § 108; *El-Masri*, cited above, § 213; and *Tarakhel*, cited above, § 105). The assessment of the risk as defined above (see paragraphs 183-84) must therefore take into consideration general sources such as reports of the World Health Organisation or of reputable non-governmental organisations and the medical certificates concerning the person in question.”

26. The Court of appeal in *AM* considered the apparent tension between the approach in *Paposhvili* and the earlier domestic authorities. Sales LJ (with whom Patten LJ and Hickinbottom JL agreed) stated at [16];

“16. It is common ground that where a foreign national seeks to rely upon Article 3 as an answer to an attempt by a state to remove him to another country, the overall legal burden is on him to show that Article 3 would be infringed in his case by showing that there are substantial grounds for believing that he would face a real risk of being subject to torture or to inhuman or degrading treatment in that other country: see, e.g., *Soering v United Kingdom* (1989) 11 EHRR 439, para. [91], which is reflected in the formulations in *Paposhvili*, paras. [173] and [183], set out below. In *Paposhvili*, at paras. [186]-[187], set out below, the Grand Chamber of the ECtHR has given guidance how he may achieve that, by raising a prima facie case of infringement of Article 3 which then casts an evidential burden onto the defending state which is seeking to expel him.”

27. It is the view of the Grand Chamber that once an Appellant has adduced evidence capable of demonstrating that there are substantial grounds for believing that there would be a real risk, it is the responsibility of the Respondent to dispel doubts about it. The court in *Paposhvili* said that in raising a sufficiently credible Article 3 case this gives rise to a procedural obligation on the relevant Belgium authority to examine the case. It is unarguable that this is an attempt to reverse the burden of proof. It arguably places a responsibility or burden on the State once an Appellant has adduced evidence capable of belief which is consistent with the UNCHR approach to the burden and standard of proof. I am not bound by the guidance in *Paposhvili*, but even if it is properly applied to this case, I find that this Appellant has failed to adduce evidence capable of belief or capable of demonstrating that there are substantial grounds for believing that there would be a real risk.
28. This Appellant's claim was not believed by the first judge in 2014 or the second judge in 2017. The first judge found that there was insufficient evidence to establish a real risk that the Taliban would persecute him on return. He found that the Appellant had been able to give limited evidence about his reasons for leaving Afghanistan. He found that he had given his evidence for the most part consistently but the evidence based on him simply being told to do things by his mother and brother-on-law. The first judge recorded that his evidence was vague and that there were discrepancies. He concluded that taken at its highest the Appellant had not established that he was at risk and in any event, he could safely relocate to Kabul. The first judge did not believe that the Appellant was not able to contact with his family. The Appellant made a further witness statement that was before the second judge which effectively repeated the claim and made an unsupported and assertion that he had not had contact with his family since he came here in 2013. There was no reference to efforts that he has made to contact them. He has not produced a further statement. He relied on letters from the Red Cross which predate the hearing before the second judge. At the hearing before me these were adduced for the first time and they had not previously been mentioned.
29. The evidence from the British Red Cross was not before the first judge. His findings are the starting point in line with the guidance in *Devaseelan* [2002] UKIAT702. There was no challenge to his decision as far as I am aware.
30. The Appellant is in his eighteenth year. His case was not presented before me on the basis that he would be returning to Afghanistan as an unattended child. It was accepted at the start of the hearing before me that he was now an adult although Mr Bedford stated that there is some doubt as to this because of the notional date of birth which he gave to the Respondent. This is an issue that has not previously been raised. It has not been advanced by the Appellant that he would be returning to Afghanistan as an unattended child. My starting point was that the Appellant was an adult; however, I accept that he was young and this is a material factor. In addition, his age would have impact on his ability to give detailed and consistent evidence and his understanding of what was material in his case would impact on his ability to cooperate with his solicitors. His age was likely to have hampered his ability to

assist with the preparation and presentation of his case at all stages. However, I have also considered that the Appellant has been represented throughout these proceedings. It is inexplicable why he attended the hearing before me in 2018 with letters from the Red Cross which he failed to disclose at an earlier stage in the proceedings. The letters according were in existence at the time of the hearing before the second judge. It was clear from the Appellant's oral evidence before me that he understood the significance of this evidence and that the issue in his appeal very much turned on whether he has family in Afghanistan with whom he has contact.

31. The Appellant's witness statement before the second judge was skeletal. He did not rely on a further witness statement in relation to the hearing before me. He failed to give evidence in any meaningful detail relating to the efforts that he has made in order to contact his family members in Afghanistan and in the UK. His evidence was that he was not asked by his solicitors to give another statement. This was not supported. Taking into account the Appellant's age and considering his evidence before me and the previous findings, I conclude that I do not find him to be credible witness. I conclude that the Appellant has not established that he does not have family in Afghanistan and that he has not had contact with them since his arrival here. The letters from the Red Cross in the context of the evidence as a whole are not reliable. I find that the Appellant understood the significance of this evidence. He has had ample opportunity but failed to advance a credible explanation for having not disclosed the letters at an earlier stage in the proceedings. The Appellant has not given an account which is capable of raising a sufficiently credible case under Article 3. In this case the Appellant cannot be said to have made a generally coherent and credible account of events which is consistent with information from reliable and objective sources.
32. The Respondent's tracing efforts were limited; however, this must be considered in the context of the very limited information that the Appellant provided. I accept that the Appellant did not return the pro-forma. He did not give evidence on this matter which was raised in the decision letter. The Appellant has not provided the Respondent with any further information which would assist them to trace his family in Afghanistan. I have had regard to EU (Afghanistan) and Ors v Secretary of State for the Home Department [2013] EWCA Civ 32 at paragraph 10 which reads as follows:-

"Lastly, I should mention a point made by the Secretary of State which I consider to have substance. Unaccompanied children who arrive in this country from Afghanistan have done so as a result of someone, presumably their families, paying for their fare and/or for a so-called agent to arrange their journey to this country. The costs incurred by the family will have been considerable, relative to the wealth of the average Afghan family. The motivation for their incurring that cost may be that their child faces a risk if he or she remains with them in Afghanistan, or it may simply be that they believe that their child will have a better life in this country. Either way, they are unlikely to be happy to co-operate with an agent of the Secretary of State for the return of their child to Afghanistan, which would mean the waste of their Investment in his or her journey here."



33. According to Mr Bedford the test applied by a decision maker to determine whether an application is certified under s.94 of the 2002 Act namely whether a claim is clearly unfounded namely whether it has a prospect of success is synonymous with the test set out by the Grand Chamber in *Paposhvili*, namely whether the Appellant has adduced evidence capable of belief. It follows that if an application has not been certified as clearly unfounded it is arguable and therefore there is no additional burden on the Appellant in this case. I find that this argument has no merit. The test under s.94 is not a burden/standard of proof. It is a filter to be applied on the evidence before the decision maker who does not assume a judicial role. The filter cannot be substituted for the test that I must apply on the evidence that is now available to me following a judicial hearing. The filter is a much lower test. There are many reasons why a claim may not be certified. In this case the Appellant was a minor at the time that he made an asylum claim. This was a factor when determining whether or not to certify his claim. There would be nothing to gain in certifying his claim and preventing him from pursuing an in-country appeal while at the same time granting him discretionary leave to remain.
34. I do not accept the Appellant's evidence that he is not in contact with his family. It is not necessary in the circumstances for me to make any assumptions about what will happen to him on return to Afghanistan and effectively create an alternative case. He has not raised an Article 3 claim which is capable of belief. Any potential for risk to him would arise from a lack of family support/network. However, his evidence does not establish that this would be the case for him. I find that the Appellant can return to Kabul and it would be safe and reasonable for him to do so. I have applied the guidance in AS<sup>3</sup>. Had I accepted his evidence that he did not have family in

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<sup>3</sup>. The headnote of the decision which represents the main body of the decision reads as follows:-

*"Risk on return to Kabul from the Taliban*

- (i) *A person who is of lower-level interest for the Taliban (i.e. not a senior government or security services official, or a spy) is not at real risk of persecution from the Taliban in Kabul.*

*Internal relocation to Kabul*

- (ii) *Having regard to the security and humanitarian situation in Kabul as well as the difficulties faced by the population living there (primarily the urban poor but also IDPs and other returnees, which are not dissimilar to the conditions faced throughout many other parts of Afghanistan); it will not, in general be unreasonable or unduly harsh for a single adult male in good health to relocate to Kabul even if he does not have any specific connections or support network in Kabul.*
- (iii) *However, the particular circumstances of an individual applicant must be taken into account in the context of conditions in the place of relocation, including a person's age, nature and quality of support network/connections with Kabul/Afghanistan, their physical and mental health, and their language, education and vocational skills when determining whether a person falls within the general position set out above.*
- (iv) *A person with a support network or specific connections in Kabul is likely to be in a more advantageous position on return, which may counter a particular vulnerability of an individual on return.*
- (v) *Although Kabul suffered the highest number of civilian casualties (in the latest UNAMA figures from 2017) and the number of security incidents is increasing, the proportion of the population directly affected by the security situation is tiny. The current security situation in Kabul is not at such a level as to render internal relocation unreasonable or unduly harsh.*

*Previous Country Guidance*

- (vi) *The country guidance in AK (Article 15(c) Afghanistan CG [2012] UKUT 163 (IAC) in relation to Article 15(c) of the Qualification Directive remains unaffected by this decision.*

Afghanistan, I may have reached a different conclusion in the light of his age and circumstances. I may have concluded that return to Kabul would breach the UK's obligations under Article 3 on the basis that he would be returning without any support network having left at such a young age. Mr Bedford addressed me on AS, relying specifically on [230] and [231]<sup>4</sup>. I remind myself that the issue in this appeal is not whether the Appellant could reasonably and safely relocate because he is not at

(vii) *The country guidance in AK (Article 15(c)) Afghanistan CG [2012] UKUT 163 (IAC) in relation to the (un)reasonableness of internal relocation to Kabul (and other potential places of internal relocation) for certain categories of women remains unaffected by this decision.*

(viii) *The country guidance in AA (unattended children) Afghanistan CG [2012] UKUT 00016 (IAC) also remains unaffected by this decision."*

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"230. Our findings above show that it is not generally unsafe or unreasonable for a single healthy man to internally relocate to Kabul. However, we emphasised that case by case consideration of whether internal relocation is reasonable for a particular person is required by Article 8 of the Qualification Directive and domestic authorities including Januzi and AH (Sudan). When doing so, we consider that there are a number of specific factors which may be relevant to bear in mind. These include, individually as well as cumulatively (including consideration that the strength one factor may counteract on balance the weakness of another factor):

- (i) Age, including the age at which the person left Afghanistan.
- (ii) Nature and quality of connections to Kabul and/or Afghanistan.
- (iii) Physical and mental health.
- (iv) Language, education, location and skills.

231. We consider age as a relevant factor given that we have not seen any reason or evidential basis to depart from specific guidance given in AA (unattended children) Afghanistan CG [2012] UKUT 00016, which was supported in evidence before us as to greater risk to or vulnerability of minors. There is no bright line rule at the age of 18 when a person in the United Kingdom is considered to be an adult (there are different views as to becoming an adult and in particular as to achieving manhood in Afghan society which is not specifically linked to age but more to marital status) where such issues fall away overnight but are more likely to gradually diminish.

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

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

234. In our conclusions, we refer throughout to a single male in good health as this is the primary group of people under consideration in this appeal and reflects the position of this particular Appellant. It is uncontroversial that a person who is in good health or fit and able is likely to have better employment prospects, particularly given the availability of low or unskilled jobs involving manual labour in Kabul. We were not provided with any specific evidence as the likely impact of poor physical or mental health on the safety or reasonableness of internal relocation to Kabul but to consider it reasonable to infer that this could be relevant to the issue and the specific situation of the individual would need to be carefully considered.

235. Finally, it is also reasonable to infer that a person who speaks the local language in Kabul would be in a stronger position than a person who does not, and that educational and vocational skills would also strengthen a person's ability to support himself in Kabul with better employment prospects."

risk in his home area. The problem with the Appellant's case as advanced is that it rests on his claim to have had no contact with his family and no support network in Kabul, but he has not discharged the burden of proof (applying *N* or the guidance in *Paposhvili*). I am unable to make findings about the nature and quality of the support network available to him in Kabul. He may return to his home area rather than stay in Kabul, if he has family there, but I cannot speculate about that. I do not find that he has established that there is any compulsion to return to his home area. I find that he could safely relocate to Kabul. The evidence did not disclose that the Appellant has any particular vulnerabilities. There was no meaningful evidence from support workers or social workers to which the Appellant referred to in evidence. Any potential problems that would arise as a result of his age, difficulties in finding employment and cultural integration would not render relocation unsafe (or unreasonable) because he has not established that he does not have a support network available to him which would counter these concerns.

35. The Appellant has been here for a number of years. He came to the UK when he was a young child (aged 13). He has not advanced a case under Article 8. I was not addressed in relation to Article 8. On the very limited evidence before me he cannot meet the requirements of the Immigration Rules. There was very little evidence before me of a significant private life which would engage Article 8. On the basis that he has been here since he was 13, I conclude that he has a private life. He gave evidence about his course of study. However, the inevitable conclusion, on the evidence before me, is that the interference with his private life is proportionate.
36. It may be that the Appellant was poorly served by his solicitors in the light of the service of potentially significant evidence at the eleventh hour, the failure to advance a case under Article 8 and the failure to produce at any stage a witness statement properly engaging with the issue in relation to his family and efforts that he has made to contact them. It may be the case that he has failed to cooperate with his solicitors. It is not for me to speculate. If it is the former the Appellant may be able to obtain evidence on the issue relating to the efforts he has made to trace his family to support the Red Cross letters that he relied on at the hearing before me and which were submitted at the last minute to support a fresh claim. However, the inevitable outcome of this appeal is that it is dismissed on Article 3 grounds.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Joanna McWilliam*

Date 31 July 2018

Upper Tribunal Judge McWilliam