Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/09438/2019**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 4 December 2020	**On 14 January 2021**

Before

UPPER TRIBUNAL JUDGE BLUM
DEPUTY UPPER TRIBUNAL JUDGE WELSH

Between

JAH
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, we make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the Appellant or members of his family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Representation:
For the Appellant: Mr Bundock of Counsel, instructed by Elder Rahimi Solicitors
For the Respondent: Mr Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is 20 years old (date of birth 1 January 2000). He is a national of Afghanistan and his home area is the Nangarhar province.

2. This is the remaking of the decision in the Appellant's protection and human rights appeal, following the decision at the error of law hearing that the First-tier Tribunal had erred in law and that its decision should be set aside. The Upper Tribunal retained the factual findings of the First-tier Tribunal, insofar as they relate to the rejection of the Appellant's claimed fear of the Taliban (see paragraph 32 of the error of law decision). It not being in issue that the Appellant would face a real risk of serious harm, as defined in Article 15(c) of the Qualification Directive, in his home province of Nangarhar, the Upper Tribunal identified the remaining issues for consideration on remaking as relating to the reasonableness of internal relocation to Kabul.

3. In summary, it is the Appellant's case that his personal circumstances are such that it would be unreasonable to expect him to relocate to Kabul:

   (1) he had lived in the Nangarhar province with his mother, father and older brother. He is not in touch with his family - his father and brother are dead and he lost contact with his mother when he left Afghanistan;
   (2) he has never lived in Kabul and does not know anybody there;
   (3) he has been diagnosed as suffering from Post-Traumatic Stress Disorder ["PTSD"], with symptoms of complex PTSD. The nature and extent of his symptoms are such that he will be unable to fend for himself in Kabul, both in the short and long term;
   (4) his social functioning in the United Kingdom ["UK"], limited as it is, is dependent upon the extensive help he receives from others. This help would not be available in Kabul; and
   (5) his mental health symptoms are likely to exacerbate on return and there is no prospect of him being able to access any mental health care, partly because of the limitations of such care in Kabul and partly because the assistance he would need in order to access any such care will not be available to him.

4. In the refusal decision, dated 17 September 2019, the Respondent concluded that it is reasonable to expect the Appellant to relocate to Kabul because:

   (1) he is a single adult male, who speaks Pashto and is in good health. He will therefore be able to find lawful employment; and
   (2) he has family in Afghanistan, "*such as your mother who you could reside with on your return*" [54].

5. At the remaking hearing, Mr Whitwell stated that the Respondent accepts the Appellant's mental health diagnosis and did not challenge the nature and extent of the associated symptoms.

Hearing

Preliminary issues

Error of law decision

6. Mr Bundock, who was not Counsel at the error of law hearing, sought to persuade us that we should vary the error of law findings. We indicated to the parties that we were minded to hear the argument de bene esse.

7. Mr Bundock submitted that the conclusion of the Upper Tribunal, that the First-tier Tribunal had erred in its assessment of the evidence relating to the Appellant's mental health and the extent of assistance he required in order to function on a day-to-day basis, materially tainted its conclusions not only in relation to humanitarian protection but also in relation to Articles 3 and 8 of the European Convention on Human Rights ["ECHR"].

8. He submitted that, given he was only seeking to extend the ambit of the error of law findings rather than challenging the legal basis for those findings, this is the sort of very exceptional case envisaged in the decision of the Upper Tribunal in AZ (error of law: jurisdiction; PTA practice) Iran [2018] UKUT 00245 (IAC).

9. This point was first notified to the Respondent and the Tribunal in Mr Bundock's skeleton argument, which was filed and served on the day of the hearing. Mr Whitwell submitted that the point was being raised unacceptably late. The argument could, and should, have been raised by Counsel at the error of law hearing. However, even allowing for the change of approach that can occur as a result of a change of counsel, there was no good reason why it was first being raised on the day of the remaking hearing, some nine months after the date of promulgation of the error of law decision. Given the absence of notice, he submitted that he was not in a position to address the Tribunal on the substantive issues arising in relation to Articles 3 and 8.

10. We informed Mr Whitwell that, if we were minded to allow the Appellant's application to vary the error of law decision, we would permit the Respondent to make submissions either in writing or at a resumed hearing.

11. Given our findings in relation to internal relocation and our consequent decision in relation to humanitarian protection, it has not been necessary for us to reach a conclusion on the application to vary the error of law decision.

Application to adduce further evidence

12. Mr Bundock sought a short adjournment in order to prepare an addendum witness statement for the Appellant. He required the assistance of the court interpreter to draft that statement. Mr Whitwell did not object and we permitted this course of action. On reviewing the contents of the witness statement, we determined that there was no procedural unfairness arising out of the use of the court interpreter to prepare the statement because:

(1) the contents of the statement were uncontentious and addressed a narrow point of clarification;
(2) Mr Whitwell had already indicated that he had no questions for the Appellant on his previous witness statements; and
(3) there were no other witnesses giving oral evidence.

Oral evidence and submissions

13. At the start of the hearing, we confirmed that, in light of the medical evidence, we would treat the Appellant as a vulnerable witness.

14. The Appellant gave evidence with the assistance of the interpreter. He adopted his witness statements and there was no examination-in-chief. Mr Whitwell cross-examined him only in relation to the contents of the statement taken on the day of the hearing and the extent of that cross-examination was limited to a few questions.

15. In closing, Mr Whitwell relied upon the refusal decision and Mr Bundock his skeleton argument. Both advocates made helpful supplementary submissions. We address, during the course of this decision, the issues they raised in their closing arguments.

Evidence

16. In reaching our decision we have taken into account the:

(1) Appellant's bundle (pages 1-340);
(2) Appellant's witness statement, dated 4 December 2020;
(3) Respondent's bundle; and
(4) oral evidence of the Appellant.

Legal framework

17. Paragraph 339O of the Immigration Rules, reflecting Article 8 of the Qualification Directive, provides that the Secretary of State will not make a grant of humanitarian

protection if, in part of the country of return, a person would not face a real risk of suffering serious harm, and the person can reasonably be expected to stay in that part of the country.

18. In assessing whether a person can reasonably be expected to relocate, the question to be answered is whether it would be unduly harsh to expect an Appellant, who faces a real risk of serious harm in one part of his country, to move to a less hostile part. If the Appellant can live a relatively normal life, there judged by the standards that prevail in his country of nationality generally, and if he can reach the less hostile part without undue hardship or undue difficulty, it will not be unreasonable to expect him to move there (Januzi v SSHD [2006] UKHL 5).

19. Once the Respondent has identified a location for return, it is for the Appellant to prove why that location would be unduly harsh but within that burden, the evaluation exercise should be holistic.

20. In AS (Safety of Kabul) Afghanistan CG [2020] UKUT 00130 (IAC), the Upper Tribunal gave guidance as to the factors relevant to the assessment of the reasonableness of relocation to Kabul at § 253(iii)-(v).

Findings

21. The finding of the First-tier Tribunal, that the Appellant was born on 1 January 2000, was retained. We therefore find that the Appellant was 17 years old when he left Afghanistan and was 20 years old at the date of the remaking hearing.

22. In his asylum interview and witness statements, the Appellant gave an account about his life experience in Afghanistan. We accept his evidence because:

(1) it was not challenged by the Respondent;
(2) his account contained the level of detail we would expect from somebody describing his own personal experience as opposed to a fabricated or embellished account;
(3) his account was not undermined by any inconsistency or inherent implausibility;
(4) in our view, the lack of credibility in relation to his account about his family's interaction with the Taliban does not taint his account about his life and that of his family in Afghanistan.

23. We therefore make the following findings. He was born in a village in the Surkh Rod District in the Province of Nangarhar. He lived with his parents and his older brother. His father farmed two fields that he had inherited from his own father. His father worked the land by himself with the help of his sons. The farm was of a size that permitted the family to be self-sufficient with some limited excess produce that they sold within the local community.

24. The Appellant speaks Pashto but cannot read or write because his education was limited to occasional attendance at the village Madrassa. He spent his time either assisting his father with the farm or accompanying his mother when she went shopping or when she visited friends. He does not have a Tazkera. Prior to leaving Afghanistan to come to the UK, he had never left the Nangarhar province. He has never been to Kabul and does not know anybody in Kabul.

25. The Appellant's account about his contact with his family in Afghanistan is interwoven with his account about persecution by the Taliban. Before us, he adopted all his witness statements and did not resile from his earlier accounts. The findings of the First-tier Tribunal being retained, we reject his account that his father and brother were killed by the Taliban. However, we accept his account that he has not been in contact with his family since leaving Afghanistan and that he will not be able to resume contact with them if returned to Kabul. We reach these conclusions for the following reasons:

    (1) his family live in the Nangarhar province. The evidence before the Upper Tribunal in AS (Kabul) was that there is a proportionately high civilian casualty and death rate in Nangarhar compared to the rest of Afghanistan (see in particular § 8, 52, 61 and 94) and a high number of Internally Displaced People (see in particular § 93 and 106);
    (2) our findings in relation to the living circumstances of the Appellant's family are such that it is unlikely that they would have ready access to telephone or Wi-Fi communication;
    (3) our finding that the Appellant does not have his Tazkera will impede his ability to obtain access to a mobile telephone (see the evidence before the Upper Tribunal in AS (Kabul), § 128).

26. Even if, contrary to our findings, the Appellant were able to establish some form of communication with his family, we find that they would be unable to provide him with any financial support, given our finding that the family business is little more than self-supporting.

27. There is no evidence that the Appellant suffers from any physical illness or disability and we therefore conclude that he is well, save for the physical effects of his mental health impairment. We accept the evidence of the witnesses in relation to the Appellant's mental health (his diagnosis, symptoms and the effect of those symptoms on his day-to-day functioning) because:

    (1) it was not challenged by the Respondent;
    (2) the qualifications and/or experience of the witnesses; and

(3) the witnesses' knowledge of the Appellant is derived from frequent and long-term contact with him and demonstrated by the detail within their witness statements and reports.

28. We make the following findings based on that evidence. Given the uncontentious nature of the evidence, we do not specify the source, save where it is necessary to avoid confusion or to place our findings in context.

29. The Appellant has a diagnosis of PTSD, with symptoms of complex PTSD. The symptoms include disassociation and problems of recall; low mood and anxiety; problems with emotional regulation; disturbance by noise and crowded places; flashbacks; insomnia, which leads to migraines; avoidant behaviour; sadness; negative self-concept and problems sustaining relationships. He has a history of suicidal ideation, which fluctuates rather than being ever-present. There are recorded incidents of self-harm: he saw his GP in November 2019, having deliberately burnt himself with a lighter and in April 2020, having intentionally cut himself on his arms.

30. The effect on the Appellant's day-to-day life is significant. He has the benefit of practical and therapeutic assistance, described by psychotherapist Mr Bentley as a "*combination of therapeutic, practical and social input*" (report dated 25 October 2019). This assistance commenced in 2018 and continues to date.

31. The nature of the therapy he receives is in the form of one-on-one sessions. Up to August 2020, this help was provided by mental health professionals employed by Freedom from Torture. This help ended in August 2020, partly as a consequence of the difficulties the organisation encountered with the provision of services during the current pandemic and partly because the Appellant himself, as a result of the change in the provision of services and a change in therapists, struggled to engage. His therapy resumed when The Children's Society stepped in to take over his care. He is currently receiving therapy from a Qualified Volunteer Therapist working with that organisation. The therapy continues to be in the form of one-on-one sessions and the therapist is of the opinion that the Appellant needs to continue this work in order to enable him to develop the skills necessary to process and adjust his responses to physical, mental and emotional trauma (letter dated 5 November 2020). In terms of medication, the Appellant is currently taking citalopram.

32. The Appellant relies upon practical assistance from the Refugee Association and the Children's Society in order to carry out basic day-to-day tasks. The assistance provided compensates for the Appellant's inability, as a result of his mental health symptoms, to cope with minor difficulties and basic organisational tasks. Since 2018, the Appellant has had one-on-one support from volunteers with these organisations. One of those helpers, in her letter dated 21 October 2019, described the Appellant's inability to cope with stress and manage practical tasks. She stated that he struggles to take the initiative and become stressed by the smallest of challenges. In a letter

dated 17 October 2019, a helper described how the Appellant becomes "*withdrawn and overwhelmed into inaction*" in response to stress. In a letter dated 29 August 2019, another helper described how the Appellant struggles with independent travel, budgeting, meal planning and cooking. This helper described how she had to accompany the Appellant on his journey to his therapy sessions for a period of 10 months before he was able to make the journey on his own. Those struggles continue to date. One of the workers with the Children's Society, in a letter dated 10 November 2020, described how he still has to accompany the Appellant to solicitor's appointments. This worker also speaks to the Appellant on the telephone twice a week, providing emotional support.

33. A volunteer with Freedom from Torture, who provides short holidays for clients of Freedom from Torture, developed a relationship with the Appellant through this charitable work. He is not a mental health professional and so his perception of the Appellant is that of an ordinary person coming into contact with the Appellant. In a letter, dated 9 November 2020, the author described the Appellant as follows: "*[the Appellant] is a likeable boy, but he is seriously disabled. His problem seems to be a level of distraction that deprives them of the ability to act or apply himself, even in simple matters. [The Appellant] lacks the level of enterprise necessary to look after himself or interact with others. With some effort one can engage him in conversation or in a game, but the moment he is left to himself [the Appellant] sinks back into a kind of sad reverie. His mind seems somewhere else and he seems completely absorbed*."

Conclusions

34. Applying this factual matrix to the country guidance in AS (Kabul), we conclude that it would be unduly harsh to expect the Appellant to relocate to Kabul. We reach this conclusion for the following reasons.

35. The Appellant would arrive in Kabul with no established social network nor any connections that could be fostered in order to develop such a network. His experience of life in Afghanistan was as a child, living in a remote rural setting, entirely dependent upon his family. He is no experience of life as an adult in a city. His family would be unable to provide remote assistance, financial or emotional.

36. He would have access to the basic level of support provided for returnees, in the form of temporary accommodation, which would last two weeks. He would be provided with limited funds, which he would need to use to pay for accommodation thereafter and to feed himself. The accommodation would be in a 'tea house'. Whilst this accommodation, as found in AS Kabul, is adequate for most single male returnees, this Appellant - with his mental health difficulties, lack of experience of independent living and lack of knowledge of city life - would be vulnerable to the exploitation and violence described at § 75 of AS (Kabul). In AS (Kabul), the Upper Tribunal found that the funds available to returnees would be capable of lasting

between four and six weeks, after which the returnee would need to find employment. However, the caveat identified, namely that if a person is not astute or lacks knowledge of local prices, applies in the case of this Appellant. He would therefore need to be able to find employment more quickly.

37. We conclude that that there is no real prospect of the Appellant being able to secure employment, whether in the short or long term. As he is without a Tazkera, he would need to compete for work as a manual day labourer. His demeanour, as a result of his mental health condition, would not be attractive to employers. Moreover, he would be competing for work with men with experience of labouring work, some of whom would have their own tools. Even if he were able to secure such employment, we conclude that he would not be capable of carrying it out given the symptoms associated with his mental health difficulties.

38. In the long term, these impediments to securing employment would not ameliorate because his mental health difficulties will prevent him from establishing a social network that might assist him and he will be without the therapy required to improve his circumstances. As found in AS (Kabul), many inhabitants of Kabul suffer from mental health problems and there is a lack of facilities and professionals available to provide treatment. Further, even if help were available, this Appellant is dependent upon others to help him access that help and he will not have that support in Kabul.

39. Given our findings and conclusions, we do not need to go on to consider the argument put forward by Mr Bundock that the Appellant would face a serious and individual threat to his life or person by reason of indiscriminate violence on return to Kabul.

NOTICE OF DECISION

The appeal is allowed on humanitarian protection grounds.

TO THE RESPONDENT
FEE AWARD

No fee was paid or is due and we therefore make no fee award.

C Welsh

Signed Date 31 December 2020
Deputy Upper Tribunal Judge Welsh