IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001655

First-tier Tribunal No: LH/00583/2023

THE IMMIGRATION ACTS

Decision and Reasons Issued:

5th January 2024

Before

UPPER TRIBUNAL JUDGE KEBEDE
DEPUTY UPPER TRIBUNAL JUDGE MALIK KC

Between

HW
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE
FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr Jonathan Holt, Counsel, instructed by SABZ Solicitors
For the Respondent Mr Andy McVeety, Senior Presenting Officer

Heard at Field House on 28 November 2023

DECISION AND REASONS

Introduction

1. This is the re-making of the decision in the Appellant's appeal from the Secretary of State's decision to refuse his protection and human rights claims. The Appellant's appeal was originally dismissed by First-tier Tribunal Judge Gould ("Judge") in a decision promulgated on 13 April 2023. Deputy Upper Tribunal Judge Metzer KC ("Deputy Judge"),

on 25 August 2023, set aside that decision, preserved underlying findings of fact and retained the appeal for re-making of the decision.

Factual background

2. The Appellant is a citizen of Afghanistan and was born 5 September 1994.

3. The Appellant arrived in the United Kingdom clandestinely in 2014 and made a protection claim on 24 February 2020 on the basis of imputed political opinion. The Secretary of State refused that claim, and the associated human rights claim, on 15 July 2022. The Secretary of State held that the Appellant's account was not credible and there was no risk on return to Afghanistan.

4. The Judge heard the Appellant's appeal from the Secretary of State's decision of 4 April 2023. The Appellant was represented and gave oral evidence. He contended that he was wanted in Afghanistan and has a fear of persecution at the hands of the Taliban or the Yunus Khel tribe. The Judge, at [27]-[38], found that the Appellant's account was not credible and rejected it in its entirety. The Judge, at [43]-[48], further found that it would not be unduly harsh for the Appellant to relocate to Afghanistan and there would be no very significant obstacles to his integration into that country for the purpose of Paragraph 276ADE(1)(vi) of the Immigration Rules. The Judge, at [47]-[49], held that the Appellant's removal from the United Kingdom would not be incompatible with Articles 3 and 8 of the European Convention on Human Rights. The Judge promulgated his decision of 13 April 2023 and dismissed the appeal on all grounds. The Appellant was granted permission to appeal from the Judge's decision on 15 May 2023.

5. The Deputy Judge heard the Appellant's appeal from the Judge's decision on 25 August 2023. The Secretary of State, at that hearing, conceded that the Judge's findings, at [43], in relation to it not being unduly harsh to relocate to Afghanistan contained a material error of law. The Deputy Judge, accordingly, set aside the Judge's decision but preserved findings of fact made in relation to the underlying protection claim. The Deputy Judge directed the appeal to be retained in the Upper Tribunal for the purpose of re-making of the decision and gave case management directions as to future conduct of the appeal.

Resumed hearing

6. We are grateful to Mr Holt, who appeared for the Appellant, and Mr McVeety, who appeared for the Secretary of State, for their assistance and able submissions at the resumed hearing.

7. It was not immediately clear to us as to why the Deputy Judge had set aside the Judge's decision. We were also uncertain as to the extent of the preserved findings of fact. The language used in the Judge's

decision was somewhat confusing. The Judge, as we note above, made a finding, at [43], that it would not be unduly harsh for the Appellant to relocate to Afghanistan. However, the unduly harsh test does not apply in this context. Under section 117C of the Nationality, Immigration and Asylum Act 2002, the unduly harsh test applies in the cases for foreign criminals facing deportation from the United Kingdom. In the context of protection claims, it applies where a person is at risk at the hands of non-state actors and there is a question as to internal relocation within the country of return. The situation here is different. The Appellant is not a foreign criminal facing deportation from the United Kingdom and, given that his underlying claim has been rejected as not being credible, the question as to internal relocation does not arise. It seemed to us that the Judge had conflated the test in Paragraph 276ADE(1)(vi) of the Immigration Rules with the unduly harsh test. We gave an opportunity to Mr Holt and Mr McVeety to reflect on the position and invited them to clarify their respective positions as to the issues in appeal and the extent of the preserved findings.

8. Mr Holt, after considering the position and taking instructions from the Appellant, confirmed that there was no challenge to the Judge's findings of fact at [27]-[42] and [49]-[50], and that those findings should stand. He submitted that, on analysis, the Deputy Judge had set aside the Judge's decision only in relation to Paragraph 276ADE(1)(vi) of the Immigration Rules. He submitted that the sole issue before us is whether there are very significant obstacles to the Appellant's integration into Afghanistan. He submitted that we could decide that issue on the basis of preserved findings and without hearing oral evidence. He confirmed that there was no freestanding Article 8 claim outside Paragraph 276ADE(vi) of the Immigration Rules. Mr McVeety agreed with Mr Holt's approach.

9. In the circumstances, we heard no oral evidence. Mr Holt took us to objective evidence and made brief submissions. He invited us to find that there would very significant obstacles to the Appellant's integration into Afghanistan for the purpose of Paragraph 276ADE(1)(vi) of the Immigration Rules and allow the appeal on that basis. Mr McVeety invited us to find that there would be no such obstacles and dismiss the appeal. We also had the benefit of the documents and evidence submitted by the parties below and additional evidence filed by the Appellant, including an addendum witness statement and a letter of support.

10. We reserved our decision at the conclusion of the resumed hearing.

Findings

11. The sole issue of fact before us, as noted above, is whether there would be very significant obstacles to the Appellant's integration into Afghanistan. It is common ground that the appeal should be allowed

on Article 8 grounds if the answer is in the affirmative and should be dismissed if the answer is in the negative.

12. In *Kamara v Secretary of State for the Home Department* [2016] EWCA Civ 813 [2016] 4 WLR 152, at [14], the Court of Appeal held that the idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life. The Supreme Court approved this approach in *Sanambar v Secretary of State for the Home Department* [2021] UKSC 30 [2021] 4 All ER 873, at [55], and in *SC (Jamaica) v Secretary of State for the Home Department* [2022] UKSC 15 [2023] 1 All ER 193, at [52]. In *Parveen v Secretary of State for the Home Department* [2018] EWCA Civ 932, at [9], the Court of Appeal noted that the phrase "very significant" connotes an elevated threshold and that the test will not be met by mere inconvenience or upheaval. The test contemplates something which would prevent or seriously inhibit a person from integrating into the country of return. There must be something more than obstacles. We adopt this approach in the present case.

13. Mr Holt took us to *Country Policy and Information Note Afghanistan: Humanitarian situation* (April 2022) and relied on paragraph 4.3.3, which sets out evidence of high levels of acute food insecurity in Afghanistan. He submitted that this food insecurity would make the Appellant's integration into Afghanistan difficult. He also relied on paragraph 4.7.1, which records Afghanistan as facing one of the world's most acute internal displacement crises facing multiple challenges. He submitted that the Appellant would be competing with other internally displaced people in Afghanistan which is now a very different country to when he lived there. He then took us to *Country Policy and Information Note Afghanistan: Fear of the Taliban* (April 2022) and relied on paragraph 2.4, which concerns risk from the Taliban in Afghanistan. He submitted that the Appellant's absence of over 10 years from Afghanistan is likely to lead to suspicion and he may come to the attention of those who would harm him. He also relied on paragraph 6.10, which records evidence as to transgressors of religious, cultural and social norms. He submitted that the Appellant's western dressing could be perceived as a problem and would present an obstacle to integration. Finally, he took us to *Country Policy and Information Note Afghanistan: Security situation* (April 2022) and relied on paragraphs 5.4 and 5.5, which relate to civilian casualties and nature and levels of violence. He submitted that the Appellant, in the light of general security situation, would be unlikely to integrate on return to Afghanistan.

14. We must proceed on the basis of the facts found by the Judge as to the Appellant's underlying account. There is, as we note above, no challenge to the Judge's primary findings of fact. The Judge, at [27]-[42] and [49]-[50], applying the lower standard of proof, found that there was no risk of persecution or serious harm in Afghanistan. The Appellant's underlying claim was found to be lacking in credibility and was rejected in resounding terms. The Appellant arrived in the United Kingdom in 2014 when he was around 20 years old. He has been away from Afghanistan for around 10 years. We accept that he has established a private life in the United Kingdom. He has developed friendships and connections. He has become accustomed to the freedoms that he enjoyed in this country as an adult and they are unlikely to be readily available in Afghanistan. On the other hand, he has family in that country. He spent most of his life in Afghanistan. He speaks the local language. There are no serious health issues. He is a resourceful individual. He is capable and intelligent. Although he did not give oral evidence before us, in his asylum interview and witness statements, he presented himself as someone who is able to think and articulate himself in a proper manner. This is not a case of an individual returning to a country with which they had no familiarity at all. He is not utterly isolated from the life in Afghanistan. He may find it challenging to obtain employment or set up business immediately on return to Afghanistan. His challenges as likely to increase in the light of the general situation in Afghanistan as set out above. However, he will not face a serious linguistic, cultural or security barrier. He has mental and physical capacity to secure an income. Ultimately, and despite some challenges, he will be able to establish himself in Afghanistan within a reasonable period of time.

15. Looking at all these matters in the round, we exercise a broad evaluative judgment. We find that the Appellant will be enough of an insider in terms of how life is carried on in Afghanistan. He has the capacity to participate in that life and a reasonable opportunity to be accepted there. He will be able to operate on a day-to-day basis in Afghanistan and to build up within a reasonable time a variety of human relationships to give substance to his private and family life. There is nothing that would prevent or seriously inhabit him from integration into Afghanistan.

16. Accordingly, we find that there would be no very significant obstacles to the Appellant's integration into Afghanistan. He does not meet the requirement in Paragraph 276ADE(1)(vi) of the Immigration Rules. In the circumstances, as Mr Holt fairly accepted, his removal from the United Kingdom would be compatible with Article 8. Mr Holt, as we note above, does not seek to pursue a freestanding Article 8 claim outside Paragraph 276ADE(1)(vi) of the Immigration Rules.

Conclusion

17. For all these reasons, we re-make the decision in the Appellant's appeal by dismissing it on all grounds.

Decision

18. The appeal is dismissed on all grounds.

Anonymity

19. In our judgment, having regard to the Presidential Guidance Note No 2 of 2022, *Anonymity Orders and Hearing in Private*, and the Overriding Objective, an anonymity order is justified in the circumstances of this case. We make an order under Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008. Accordingly, unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to parties. Failure to comply with this direction could lead to contempt of court proceedings.

Fee award

20. We make no fee award in the light of our decision to dismiss the underlying appeal on all grounds.

Zane Malik KC
Deputy Judge of Upper Tribunal
Immigration and Asylum Chamber
Date: 21 December 2023