



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

**Appeal  
Number  
AA/01965/2015**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision &  
Reasons  
promulgated**

**On 3 March 2016**

**On 21 July 2016**

**Before**

**Deputy Judge of the Upper Tribunal I. A. Lewis**

**Between**

**P S**

(Anonymity order made)

**Appellant**

**and**

**Secretary of State for the Home Department**

**Respondent**

**Representation**

For the Appellant: Mr P Skinner of Counsel instructed by ATM Law.

For the Respondent: Ms N Willocks-Briscoe, Home Office Presenting Officer.

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Daldry promulgated on 11 November 2015 dismissing the Appellant's appeal against a decision of the Respondent dated 8 December 2014 refusing the Appellant leave to remain in the UK following rejection of his asylum claim.

## **Background**

2. The Appellant is a national of Afghanistan born on 12 June 1992.

3. The background to the appeal is helpfully set out in summary at paragraph 7 of the decision of the First-tier Tribunal in the following terms:

*“The appellant’s claim is that he is an Afghan national who fears returning to Afghanistan because of work he carried out for a company namely Kamal Khan Mandozai Transport (KKMT) and Aria Target Logistic Services (ATLS), these being groups associated with NATO and the foreign forces. The appellant worked as an interpreter and as a consequence of this believes he would be at risk of being killed or seriously harmed if he were to be returned to Afghanistan. He claims that he would be unable to safely relocate within Afghanistan and that he would not be afforded protection from the risks to which he was exposed by the authorities in Afghanistan.”*

4. The First-tier Tribunal Judge accepted aspects of the claim, but was not satisfied that the Appellant was at risk of harm, or even held a genuine fear for his life.

5. In particular the Judge accepted: that the Appellant had worked for KKMT and ATLS from December 2008 until January 2010, being 16 when he started and 17 when he left (paragraph 32); that the Appellant would likely have come to the attention of the Taliban, and it was entirely plausible that his father was sent letters about the Appellant’s employment (paragraph 35); that the Appellant’s father was threatened and imprisoned, and that money was paid to the Taliban (paragraph 36).

6. The Judge noted, considered, analysed, and made findings in respect of the circumstances of the Appellant’s father’s detention and release by the Taliban, and the Appellant ceasing employment and leaving for Pakistan to study and obtain an IELTS qualification with a view to applying for a student visa to the UK. This analysis, across paragraphs 37–40, concludes at paragraph 40 in these terms:

*“I accept that there was some fear motivating the appellant in that it had become difficult for him in Afghanistan due to his employment and that his father had come to the attention of the Taliban as a result of his employment. However his own*

*account of his reasons for going to Pakistan did not suggest to me that he was a young man in fear of his life. I note that he did not leave until after his father was released and in my finding this suggests that he himself was not in fear of direct reprisal from the Taliban during the time of his father's incarceration, nor was I presented with any evidence that he himself had been targeted at any time. All the letters sent were to his father, his father was punished and then released and the appellant's own evidence was that since that time, there has been no specific threat to his father as a result of the appellant's previous employment as a young man with KKMT and ATLS. I note that the appellant did not claim asylum in Pakistan. Again this suggests to me that he was not in fear for his life at that time. He stayed in Pakistan for a year improving his English for the purposes of taking the IELTS test and there was no evidence to suggest that during that time his father was targeted. The evidence suggested to me that once the appellant was known to have left his employment then neither he nor his family were of interest to the Taliban."*

7. The Judge also had regard to **H and B v United Kingdom [2013] ECHR 298** in reaching the conclusion "*that as the appellant is no longer working in his former role and has not done so for over five years, then he is unlikely to be targeted by the Taliban*" (paragraphs 41-43).

8. The Judge further considered risk on return at paragraphs 48-50. She acknowledged the State's weakness in providing protection to those who required it (paragraph 49), but did not consider that the Appellant was reasonably likely at risk such that he required protection. The Judge reiterated that she found there to be an absence of risk "*because he is no longer working as an interpreter, five years have now elapsed since he left Afghanistan and I have not been furnished with evidence of continuing interest in him specifically*" (paragraph 49). The Judge also stated that the country information did not suggest that the Appellant would be exposed to a risk of being handed over to the Taliban by his father (paragraph 48), and that there was no risk to the Appellant's father - "*his father was released from prison and there has been, no specific and evidenced interest in the appellant since that time*" (paragraph 49). The Judge concluded that the Appellant "*would be returning to Kabul as an educated and resourceful young man who would be able to live independently there in my finding and that on this basis his asylum claim should fail as should his Article 2 and 3 claims*" (paragraph 50).

9. In respect of the Appellant's actual role as an employee the Judge said this:

*"[H]e was a young man when he was first employed and he described his duties as clerical, answering a question about his job title by saying "it was like a clerk". He was a recent school leaver at aged sixteen and explained that the organisation needed someone to speak English who was also familiar with a computer. It is clear that he was working for a NATO-related organisation and the COI report at the time of the refusal (February 2013) identified that people working for such organisations were at risk, "according to the AIHRC, people working with international forces are targeted by the Taliban. Translators working for US military or ISAF forces were mentioned by the AIHRC among the Taliban targets. As regards family members of people working for the international forces, there are examples that the Taliban has intimidated their families and acquaintances, but the real risk is for the person working for the forces". Therefore although the appellant was a young man at the time, I find that because of the nature of the organisations he was working for, he was likely to come to the attention of the Taliban regardless of the level of interpreting that he was actually carrying out." (Paragraph 33-34)*

10. I pause to note that it is clear from the Judge's finding that what was considered to be particularly germane in the Appellant being targetted was the fact of work for the international forces in itself, rather than specifically the nature of that work.

11. His appeal having been dismissed, the Appellant sought permission to appeal which was initially refused by First-tier Tribunal Judge Ford on 8 December 2015, but subsequently granted by Upper Tribunal Judge O'Connor on 15 January 2016.

12. The grant of permission to appeal was in these terms:

*"It is arguable that the FtT failed to make a finding as to whether the appellant would obtain employment as an interpreter upon return to Afghanistan and, if so, whether (i) this would put him at risk of being persecuted and (ii) he should lawfully be required to refrain from taking such employment in order to avoid being persecuted. All grounds may be argued."*

## **Consideration**

13. The Appellant's grounds identify themselves as 'broadly' twofold: "*(i) the Judge's treatment of the issue of risk on return and (ii) her analysis of his fear in Pakistan, a third country*" (Grounds at paragraph 5).

14. Although the grant of permission to appeal indicated that "*all grounds may be argued*", there was no express or specific focus on the second of the broad 'topics'. It is to be noted that this line of challenge is advanced in a somewhat cautious way, the language of the grounds seemingly uncertain as to their own premise: "*although it is not entirely clear*", "*In so far as that is intended to mean*", "*Whilst it is accepted that it is not clear...*". What is suggested in the grounds is that the Judge's conclusions in respect of the Appellant's state of mind whilst in Pakistan - that he was not in fear having left Afghanistan and attempting to put himself in a position to be able to apply for entry clearance to the UK as a student - was not a relevant consideration to evaluating the Appellant's subjective fear of persecution in Afghanistan.

15. In my judgement it was entirely open to the First-tier Tribunal Judge to conclude that the failure to claim protection in Pakistan and instead to seek to arrange to enter the UK indicated a primary motivation of study and improvement rather than seeking protection, and that this was a relevant consideration in an overall evaluation of the Appellant's case (paragraph 46). It is, of course, entirely possible that a person seeking to enter the UK for the purposes of study might also have a well-founded fear of persecution in their country of origin. Whether or not that is indeed the situation will require to be determined on the evidence and facts of the particular case. It was open to the Judge to conclude as she did at paragraph 46. I do not accept that the Judge considered the mere fact of coming to the UK to study as determinative in and of itself, but reached the conclusion in this regard on the evidence and facts of this particular case. The approach of the Judge was not materially different to that required by section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

16. More significantly, in my judgement this analysis - both by the Judge and in turn in the challenge raised by the Appellant - does not materially impact upon the overall assessment of actual risk, as opposed to the Appellant's subjective fear, in Afghanistan. Even if there were an error in this regard - which I do not accept - it would not be material to the overall outcome of the appeal before the First-tier Tribunal.

17. The primary ground of challenge, as now advanced before the Upper Tribunal, is essentially based on two premises, which I observe do not appear to have featured in the articulation of the Appellant's case before the First-tier Tribunal - e.g. see Skeleton Argument dated 12 October 2015 wherein the focus is on a risk on return by reason of the events of the Appellant's history rather than likely future conduct - notwithstanding the unsupported, and seemingly undeveloped, assertion in the Appellant's witness statement "*If I return I would have to continue such work...*" (witness statement 8 October 2015, paragraph 34).

18. The Appellant's case, as identified in the grant of permission to appeal, does indeed now focus on possible future conduct by the Appellant potentially giving rise to risk subsequent to return, or otherwise possible future restraint from conduct thereby impinging on Convention rights. There are essentially two limbs to this challenge:

- (i) That the Appellant would work again in Afghanistan as an interpreter for the representatives of foreign agencies; and
- (ii) That the Appellant cannot - for the purposes of the Convention - be expected to modify his behaviour in this regard.

19. The grant of permission to appeal reflects the approach articulated in **MSM (journalists; political opinion; risk) Somalia [2015] UKUT 00413 (IAC)** - to the effect that what is required is "*an evaluative predictive judgement*" (paragraph 35) as to conduct on return, and a consideration of whether an effective requirement to restrain oneself from certain conduct would itself engage the Convention. The analysis in **MSM** is informed by and draws upon in particular, **RT (Zimbabwe) [2012] UKSC 38** and **HJ (Iran) [2010] UKSC 31**.

20. **RT (Zimbabwe)** saw the extension of the **HJ (Iran)** principle to *not* expressing a political opinion. At paragraph 25 Lord Dyson restates "*that there are no hierarchies of protection amongst the [Refugee] Convention reasons for persecution*", before going on to observe:

*"The Convention reasons reflect characteristics or statuses which either the individual cannot change or cannot be*

*expected to change because they are so closely linked to his identity or are an expression of fundamental rights.”*

In this latter regard Lord Dyson goes on, at paragraph 27, to cite his own words from paragraph 110 of **HJ (Iran)**:

*“If the price that a person must pay in order to avoid persecution is that he must conceal his race, religion, nationality, membership of a social group or political opinion, then his being required to surrender the very protection that the Convention is intended to secure for him. The Convention would be failing in its purpose if it were to mean that a gay man does not have a well-founded fear of persecution because he would conceal the fact that he is a gay man in order to avoid persecution on return to his home country.”*

21. In considering issues similar to those that arise herein, but instead in the context of a journalist at risk in Somalia because of his perceived political opinions, the Tribunal in **MSM** made, amongst others, the following germane observations.

*“The Appellant’s case on this issue was supported by UNHCR, intervening. The core submission of Ms Demetriou QC was that it is unlawful to deny an asylum applicant refugee status on the basis that they could be expected to conceal, or exercise discretion or restraint in relation to, one of the core protections provided by the Refugee Convention namely race, religion, nationality, membership of a particular social group or political opinion, in order to avoid persecution. It was argued that asylum cannot be refused on a basis which expects or requires the applicant to disavow a right, or status, protected by the Convention. This argument recognises that the practice of a particular profession is not protected by the Convention. However, it is emphasised that political opinion is a protected ground and, further, that the Appellant’s chosen profession of journalism is indissociable from his actual or imputed political opinion. As a result, to expect or require him to relinquish his profession contravenes the Convention as it directly undermines one of the protections which it affords.”* (Paragraph 30).

*“Thus the focus must be on the future conduct of the person concerned. In all cases, this requires a finding or, perhaps more accurately, an evaluative predictive judgment which, we consider, is to be undertaken according to the civil standard of the balance of probabilities.”* (Paragraph 35).

*“We are prompted to repeat our observation above: protection of the right in question must prevail. To this we would add that this is achieved by the grant of refugee status. The effect of such grant is to enable the person concerned to exercise the right freely in the country of refuge.”* (Paragraph 37).

22. It may be seen that it is not intended that the Refugee Convention be an instrument that protects the right to pursue any profession or engage in any employment. Indeed as much is expressly acknowledged in **MSM** at paragraph 50: *“We acknowledge at this point the Secretary of State’s argument that the Refugee Convention does not protect the right to pursue a profession of one’s choice”*. The Convention will only be engaged if such pursuit, or the coerced restraint from such pursuit, impacts upon the types of rights that are the object of the Convention.

23. With these matters in mind, I turn to the two limbs that have become the focus of proceedings.

24. The first relates to the requirement to make an ‘evaluative predictive judgement’ of the Appellant’s conduct in the event of return to Afghanistan, and specifically whether he would obtain employment as an interpreter upon return.

25. The criticism of the Judge’s failure in this regard – and it is not and could not reasonably be disputed that the Judge made no such express finding – is to some extent unfair given that this aspect of the case that has assumed core relevance before the Upper Tribunal was not apparently articulated before the First-tier Tribunal. Indeed if this were a key element of the Appellant’s claim one would have expected to see substantially more in the evidence before the First-tier Tribunal than the seemingly passing reference at paragraph 34 of the witness statement (quoted above) – which was not referenced or otherwise amplified or developed in the Skeleton Argument.

26. Be that as it may, the guidance in **MSM** suggests that such an evaluation is nonetheless required. I pause to express my doubt as to whether the Tribunal was ruling that that is inevitably so in every case, or whether it is only really a requirement in the likely limited number of cases in which there is a potential risk from future conduct (rather than past conduct), and in circumstances where it is apparent that the conduct, or restraint from such conduct, is of a nature that engages a Refugee Convention reason. In particular, the



categories of job where refraining from taking employment equates to refraining from expressing a political view or practising a particular religious faith or pursuing a lifestyle based on a particular sexuality, are likely to be few.

27. On the facts of this particular case I observe the following:

(i) The only reference to possible future conduct in respect of employment in the entirety of the evidence that I am able to identify is at paragraph 34 of the Appellant's witness statement of 8 October 2015 where he states: "*The only job I have had in Afghanistan was the one with KKMT and ATLS. If I return I will have to continue such work and I and my family will be in danger.*" Even in the context of this paragraph the Appellant goes on to describe alternative scenarios in which he does not take such employment, but instead relocates.

(ii) This statement is now articulated into the following submission of fact in the Grounds of appeal: "*[A]s his work as a translator was the only job he had had, he would continue such work*" (grounds at paragraph 7.2).

(iii) Such a submission is devoid of logic both generally and in the particular circumstances of this case.

(iv) In general terms, the fact of having previously taken one type of employment does not render it inevitable that the same or similar employment would be undertaken in the future. Nor does it indicate a fitness for only one type of employment.

(v) There is nothing in the Appellant's particular circumstances that indicates either that he would be unsuited to any sort of employment that did not involve assisting foreign agencies (whether in the context of acting as a translator or otherwise), or that he could only find such employment if returned to Afghanistan.

(vi) There is nothing in the Appellant's particular circumstances that indicates a dedication or drive to develop a career as a translator or interpreter, or otherwise to develop a career working for foreign agencies in Afghanistan.

(vii) Moreover the logic of the Appellant's submission is fundamentally defeated by the findings of the Judge. Bearing in mind that the Judge has acknowledged the risk to those working for foreign agencies, her conclusion at paragraph 50 that the Appellant could return to Kabul "*as an educated and*

*resourceful young man who would be able to live independently there*" is implicitly premised upon a finding that the Appellant would be able to find and obtain some alternative employment to support his independent existence without resorting to resuming the same or similar employment as he had previously undertaken. This is to reject the substance of the Appellant's unsupported and undeveloped assertion at paragraph 34 of his witness statement.

(viii) Although, as noted above, the First-tier Tribunal Judge found that the adverse interest shown in the Appellant by the Taliban arose by reason of the fact of his employment assisting foreign agencies rather than specifically because of his role as a translator, it is the role as a translator that the Appellant has sought to emphasise in his appeal. In my judgement it is transparent that he has done so by reason of the widespread publicity and campaigning in support of the grant of protection to some who worked directly alongside UK and NATO armed forces in Afghanistan as interpreters, for example communicating between troops and civilians during patrols, or in more sensitive work such as interrogation. It is clear that the Appellant has not acted in anything approaching that sort of role. Be that as it may, nothing in the analysis herein turns upon such a distinction between someone employed by a sub-contractor supplying transport services who in the context of that role acts as an occasional interpreter between the sub-contractor and the military end-user, and a person employed directly to assist and work alongside the military on operational security manoeuvres and the military's engagement with the civilian population and/or the enemy.

(ix) I note that the Appellant did not apply specifically to become an interpreter or translator: such work as he has undertaken as a translator appears to have been essentially incidental to his primary role.

(x) There is nothing in the evidence to suggest that the Appellant's work was motivated by any sort of ideology either generally or specifically, or any personal drive or ambition to become an interpreter. See for example the asylum interview at question 35: "*Q. Why did you decide to apply for the job? A. I was a student, I was educated, my father was an elderly man and I wanted to work. That's why and I was fit for this job.*"

(xi) The Appellant had and still has no qualifications as an interpreter, and has not sought to obtain any such relevant qualifications whilst in the UK. He has pursued a Diploma course in Business & Management in the UK. (Merely learning

English and even passing English tests is not tantamount to training or qualifying as an interpreter.)

(xii) The Appellant's experience working as an interpreter is relatively limited. He worked for approximately 14 months in his position, in respect of which only some of his duties involved translation. Moreover it is to be inferred that his English was relatively basic - he having thereafter studied for approximately one year in Pakistan in order to achieve the relevant IELTS standard to allow him to enter the UK as a student. This would suggest that his experience as a translator in Afghanistan was at a basic level of fluency, and one far removed from involvement in important operational matters.

(xiii) In the past the Appellant was sufficiently intimidated to stop working for the foreign agencies. (See First-tier Tribunal's finding at paragraph 10.) This is a significant indicator that if he perceives a continuing threat in such work he would not seek to undertake it.

(xiv) Neither a job working in contact with foreign agencies, nor a job as an interpreter, are obviously vocational or a 'calling' in the abstract. More particularly I find that there was no evidence before the First-tier Tribunal to suggest that such work was considered to be vocational or a 'calling' for the Appellant. There is nothing to support the notion that such work might be fundamental to the Appellant's sense of identity.

(xv) The Appellant has not demonstrated - or otherwise even suggested - a wish to work as an interpreter in the UK. Accordingly, in echo of paragraph 37 of **MSM** the Appellant has not demonstrated that a benefit of a grant of protection would be "*to enable the person concerned to exercise the right freely in the country of refuge.*"

28. Taking all such matters together I have reached the following conclusions. The Judge implicitly rejected the Appellant's assertion that he "*would have to continue such work*" as he had previously undertaken if he were to be returned to Afghanistan - such an assertion that was in any event illogical, unsupported by any other evidence, and not developed before the First-tier Tribunal. Moreover the Appellant presented no evidence - whether circumstantially, or explicitly on point - that indicated he was unfit to undertake any other sort of employment, or that he had a vocational calling fundamental to his own identity to work either in support of foreign agencies, or specifically as an interpreter. Bearing in mind that there was no evidence of a vocational calling, the most reliable indicator

as to future conduct was the fact that the Appellant had previously desisted from such employment.

29. Accordingly, whilst it is to be acknowledged that the Judge did not expressly undertake an evaluative predictive judgement as to the likelihood of the Appellant resuming the same or similar work upon return to Afghanistan, had she done so there would have been no evidential basis to conclude that the Appellant would reasonably likely seek to take up such employment again. Indeed the best evidence – past conduct – powerfully indicated the opposite.

30. In such circumstances the Judge's failure to make an express finding as to whether the Appellant would obtain employment as an interpreter was not, in my judgement, material because there was no scope on the evidence before the First-tier Tribunal to make a finding that he would. The overwhelming weight of evidence – that the Appellant has not shown any vocation for such work, and has previously left it because of intimidation – indicates that the Appellant would not seek such employment again; moreover the Judge concluded that the Appellant could live independently without putting himself in the same predicament of risk that had prompted him to quit his previous employment.

31. This leaves the second limb of challenge: whether the Appellant can be expected to modify his behaviour in this regard; or, as put in the grant of permission to appeal, whether he should lawfully be required to refrain from taking such employment in order to avoid being persecuted.

32. It is clear from the authorities cited above that an applicant cannot be expected to refrain from jeopardising conduct if that conduct is of a nature intended to be protected by the Convention – and that is the case irrespective of whether such conduct might be reckless. However, it seems to me equally clear that the authorities do not go so far as to say protection is to be granted to persons whose conduct, if restricted by fear of harm, does not involve an interference with the freedoms protected by the Convention – and indeed the authorities appear to specifically recognise that the Convention does not guarantee an absolute right to choose one's profession or employment.

33. It seems clear to me that it will only be in very particular circumstances that a choice of employment is dictated by a fundamental innate characteristic, or is otherwise referable to a

protected right under the Refugee Convention. **MSM** was just such a case. More generally, however, I consider employment is more comparable to, for example, a wish to live in a particular place – which whilst an important aspect of private life is not inevitably guaranteed under the Refugee Convention by reason of the principle of internal relocation. In other words, just as the Refugee Convention does not protect a person's wish to live in a particular town or region, it does not, in my judgement protect a person's wish to pursue a particular job – unless, perhaps, it might be said that such a job is vocational to an extent that it has become a fundamental innate characteristic of the individual, or that there are otherwise features that engage the categories of protected persons under the Refugee Convention.

34. Indeed the principle of 'internal relocation' significantly undermines the Appellant's reliance upon a submission based on 'modification of conduct'. Even a person who is at risk for a Convention reason in a particular area of his country is expected to modify his conduct to the extent of relocating within the borders of his own country if there is a place of internal relocation to which it would be reasonable to expect him to go and where he would not be at risk of persecution. It is not difficult to imagine that such relocation might also involve a change of employment, and indeed a change of the type of employment.

35. According I find that there is no absolute principle that an asylum applicant cannot be expected to modify conduct to avoid risk rather than being availed of international surrogate protection under the Refugee Convention. The question, as it seems to me has been consistently recognised in the recent authorities, is whether any such modification of conduct necessary to avoid risk in itself impacts upon rights protected by the Refugee Convention.

36. On the facts here, and further to the analysis set out above, there is nothing in any of the evidence before the First-tier Tribunal to suggest that the Appellant's employment in Afghanistan related in any way to matters intrinsic to his sense of identity, or important to him as a matter of his race, religion, nationality, membership of a particular social group, or political opinion, or was otherwise a manifestation of freedom of expression, or sexuality, or any other element protected under the Refugee Convention. There was no evidential basis to show that refraining from taking similar employment would impact upon any characteristic or status closely linked to the Appellant's identity or otherwise impinging upon his fundamental rights.

37. Accordingly, the answer to the question which may be posed upon revisiting Lord Dyson's words in **RT (Zimbabwe)**, in these terms:

is the concept of working as an interpreter for foreign agencies - or alternatively the concept of working for foreign agencies in itself in whatever capacity (although this is not how the Appellant has advanced his case before me) - a reflection of "*characteristics or statuses which either the [Appellant] cannot change or cannot be expected to change because they are so closely linked to his identity or are an expression of fundamental rights*", such characteristics or statuses being those identified as 'Convention reasons'?

is 'No'.

38. The Appellant's mere assertion that he would have to do the same work again because it was what he had done before, falls well short of establishing that it is a matter fundamental to his Convention protected rights to be able to undertake such work. There was no other evidence before the First-tier Tribunal to suggest that such work was of a significant nature to the Appellant that he could not be expected to modify it. Indeed the evidence powerfully indicates that such work is of no particular significance to the Appellant.

39. This is not to deny that interpreters and those who otherwise work alongside 'foreign' forces and agents in Afghanistan are comparable to journalists in Somalia in so far as they too might be characterised as having "*become embroiled in the continuing conflict. They have been sucked into it by reason of their occupations*" (**MSM** paragraph 34). It may be moot whether or not "*Their occupation is the stimulus for the imputation to them of political opinions*" (also paragraph 34) - it is not clear that the Taliban ascribe to them an actual political opinion or motivation rather than simply being focussed upon conduct that runs contrary to their own objectives (although where someone is at risk the persecutors' own political motivations may arguably be enough to supply the Convention reason).

40. However, the distinction between this case and **MSM** is that in **MSM** it was found that any expectation of modification of the appellant's behaviour would impact upon his fundamental protected rights, whilst in contrast, as I find, there was no evidential basis

before the First-tier Tribunal that could have sustained such a conclusion in respect of the Appellant herein. The Appellant has not shown that he could not modify his behaviour in Afghanistan without impacting upon his fundamental protected Convention rights in order to avoid persecution: in short he has not demonstrated an entitlement to international surrogate protection because it would be reasonable to expect him to pursue alternative employment, and such an expectation does not impact upon his fundamental rights.

41. I recognise that it might be said that in such a scenario the aggressor wins – the aggressor succeeds in driving the Appellant from his work. But that is to misunderstand the Refugee Convention. The Refugee Convention is not primarily designed to combat aggression in the sense of ‘taking on’ the aggressor – it is a mechanism of protection, and moreover fundamentally not a mechanism designed to protect all and any victims of aggression. Further, a grant of protection would have much the same effect on the aggressor – the aggressor would have still succeeded in its objective. The Refugee Convention does not itself directly combat oppression, but rather offers protection of the oppressed in circumstances where they cannot achieve that themselves or through recourse to mechanisms of protection in their own country. The combat of oppression and or aggressors may be sought to be achieved through other means, but is not in any sense the role or purpose of the Refugee Convention.

42. For completeness I note that during the course of his submissions Mr Skinner also emphasised the nature of the oath given by village elders to the effect that if the Appellant were to be seen working for government again he would be punished according to their tribal code and surrendered to the Taliban, and that there was no temporal limitation on such an oath: see Grounds at paragraph 7.1 and page 56 of the Appellant’s bundle before the First-tier Tribunal. However, it is to be noted that the possible outcome of the Appellant being punished and surrendered to the Taliban by the village elders is contingent upon his resumed *“cooperat[ion] with the infidels or the government as an interpreter”* – employment from which he may reasonably be expected to refrain upon return to Afghanistan.

43. Moreover, I am not persuaded of the substance of the Appellant’s submissions in respect of the Judge’s approach to the case of **H & B**. I do not accept that the Judge did anything other than make an individualistic assessment of the Appellant’s case: the conclusion of the Judge was not simply dictated by the outcome in **H**

**& B**, but rather **H & B** was appropriately taken into account in her overall assessment.

44. **In summary**: The Judge failed to make a predictive evaluation of the likelihood of the Appellant resuming the same or similar employment upon return to Afghanistan. This seems in large part to have been because it was not a point clearly articulated or otherwise amplified and developed before the First-tier Tribunal. In any event, there was no evidence to support the notion that the Appellant would reasonably likely resume such employment. The Appellant's own assertion that he would have to resume such employment because that is what he had done previously is illogical. This assertion was in any event implicitly rejected in the Judge's conclusion that the Appellant could live independently in Afghanistan (which implicitly would mean not taking up employment that the Judge accepted had put him at risk). As such the Judge's failure to make a predictive evaluation in this regard was not material because it could not have been sustainably concluded on the evidence that the Appellant would act in a way that would put him at risk. Even if it were otherwise, I would not choose to exercise the discretion in section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 to set aside the decision of the First-tier Tribunal. In my judgement the Appellant could not succeed in his appeal in any event because he can lawfully and reasonably be expected to refrain from resuming such employment as previously put him at risk instead of availing himself of the international surrogate protection of the Refugee Convention, because in so refraining there would be no interference with, or contravention of the Appellant's fundamental Convention protected rights.

### **Notice of Decision**

45. The decision of the First-tier Tribunal contained no material error of law and stands.

46. The appeal is dismissed.

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

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



comply with this direction could lead to contempt of court proceedings.

**Deputy Judge of the Upper Tribunal I. A. Lewis 20 July 2016**