



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

Appeal Number: PA/06716/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 24 October 2018**

**Determination &
Promulgated
On 31 December 2018**

Reasons

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

**JA
(Anonymity Order Made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Harris of Counsel

For the Respondent: Mr Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Afghanistan born in 1997. He appealed against a decision of the respondent made on 6 June 2016 to refuse his claim for asylum.
2. The crux of his claim is that he was born and grew up in Baghlan Province. His father had worked for the Taliban but the appellant had not seen him

for many years. The government drove the Taliban out of his area and then set up a local police force called the Arbakian. These local police harassed local families and kidnapped, particularly, young people and would threaten and beat them whilst questioning them.

3. The appellant was kidnapped by them on two occasions and was mistreated in their detention.
4. A month before leaving Afghanistan a government official was killed in the appellant's village and the appellant was once again kidnapped and accused of concealing information about the attack.
5. On returning home injured the appellant's mother took him to his uncle's house and it was then decided he should leave the country.
6. His fear is of the Taliban and of this local police force, the Arbakian.
7. The respondent did not believe the appellant's historical account.
8. He appealed.

First tier hearing

9. Following a hearing at Taylor House on 12 May 2017 Judge of the First-tier Tribunal Cooper found as follows: first, it was *"reasonably likely that [the appellant] was indeed detained and ill-treated on a number of occasions by the Arbakian police in his home area, on suspicion of helping the Taliban"* [45].
10. Second, it was *"reasonably likely that his mother decided to take him to his uncle, who in turn decided that it was not safe for him to remain there, because of similar treatment of young people by the Arbakian police in his own village, and who consequently arranged to have him taken out of the country by an agent"* [46].
11. Third, it was *"reasonably likely that in 2012 the appellant was subject to persecution by the Arbakian police on the basis of an imputed political opinion, namely, supporting the Taliban"* [47].
12. Fourth, it was *"reasonably likely that if the appellant was to return to his home area in Afghanistan, he could be at risk of persecution on the same basis as before"* [49].
13. Finally, he found that *"As it is clear that the Arbakia militia operate, in principle, with the blessing of the government of Afghanistan, it follows that the appellant would not be able to look to the government for protection."* Thus, the judge concluded *"the appellant has a well founded fear of persecution in his home area"* [50].

14. The judge, however, then went on to dismiss the appeal on the basis that internal relocation to Kabul was reasonable for the appellant.

Error of law hearing

15. The appellant sought permission to appeal on that point. At the error of law hearing before me on 12 December 2017 the respondent conceded that the decision showed error in the consideration of internal relocation. Specifically, that the First-tier Tribunal failed to have regard to background material relied on by the appellant in respect of Article 15(c) risk and internal relocation which might justify departing from the country guidance.
16. The parties were aware at that time that a new country guidance case addressing precisely these issues was in the process of being determined and the case was therefore adjourned to the first available date after the release of ***AS (Safety of Kabul) Afghanistan CG [2018] UKUT 118*** which was promulgated in March 2018.
17. The credibility findings as set out above were preserved and the only issue for the Upper Tribunal was internal relocation to Kabul.
18. The last hearing of this matter on 16 May 2018 was adjourned in order for medical evidence to be obtained. It had become apparent that the appellant was suffering from mental health problems and that a medico-legal report was necessary.
19. Thus, the matter came before me again on 24 October 2018.

Resumed hearing

20. Lodged for the hearing was a bundle containing statements by the appellant (dated 27 July 2018) and his brother (7 August 2018), an expert report by Dr Guistozzi (5 August 2018) and a psychiatric report by Dr Sinha BSc, MB ChB, MRCPsych (18 October 2018). Mr Clarke lodged two items entitled "response to an information request" on "psychiatric treatment" (6 April 2017) and "psychotherapy and psychiatry" (18 June 2018); also, a short WHO note headed "Depression a leading cause of ill health and disability: fighting stigma is key to recovery" (9 April 2017).
21. The appellant did not give evidence. However, I heard brief evidence from the appellant's brother, HA. He adopted his statement. In cross-examination he said he had come to the UK three or four years ago via an agent. An uncle had paid. He had been given a phone number for the agent in Afghanistan but had lost it. A member of the Afghan community in Birmingham had told him in April 2017 that his mother had been killed. He had not used this man to try and contact his uncle; perhaps his brother, the appellant, had tried to do so.

22. In submissions, Mr Clarke sought to rely on the refusal letter (dated 6 June 2016). He said the brother HA lacked credibility. It was implausible that they would not have contact details; cash had been paid to get them to the UK. Nor was it clear why contacts in the community had not been used to try and contact family in Afghanistan. It was notable that the Birmingham contact had not attended or given a statement. It was an attempt to distance themselves from a support network in Afghanistan.
23. Turning to the reports, Mr Clarke commented first on that by Dr Sinha. It was clear the appellant has vulnerabilities. However, if it is the case that he has a support network in Afghanistan such would help mitigate such vulnerabilities.
24. Mr Clarke questioned whether the medical report was sufficiently robust. There had only been one examination. Also, it was noteworthy that in his screening interview he was reported as being healthy. Further, if his symptoms were the result of being detained, he was not at risk of being detained in Afghanistan on return.
25. As for Dr Guistoizzi's report Mr Clarke noted that the Tribunal in **AS** had made criticisms of him particularly about "black lists." Also, his report for this case was predicated on profile and the risk of round ups. In the appellant's case he does not have a political profile and there has been no evidence of round ups since 2013. In addition, Dr Guistoizzi's comment that the appellant had likely been targeted because of his family background had not been his evidence. He had not seen his father since 2001. Mr Clarke noted further that some of Dr Guistoizzi's citations were elderly and his conclusions based on minimal sources. There was a lack of information from human rights groups or NGO's. Looked at overall his report was inadequate.
26. Ms Harris sought essentially to rely on her detailed written submissions (24 October 2018). Whilst it was correct to state that that there had been some criticism of Dr Giustoizzi in **AS** much of his evidence was accepted; his report merited significant weight in particular his detailed analysis of mental health provision in Afghanistan. Although it is clear there is some provision it is inadequate to the demands upon it. Also, it would require the appellant to seek to access it. His unwillingness to do so in the UK did not bode well for him if returned particularly in light of the stigma attached to mental health. Such would also hinder him in other aspects of his life such as trying to get work and accommodation.

Consideration

27. In ***SSHD v AH (Sudan) and Ors*** (2007) UKHL 49 it was stated that the test to determine whether internal relocation was available was the test set out in ***Januzi v SSHD (2006)*** UKHL 5, namely that the decision maker should decide whether, taking account of all relevant circumstances pertaining to the claimant and his country it would be reasonable to

expect him to relocate or whether it would be unduly harsh to expect him to do so. The test was one of great generality. In applying the test enquiry had to be directed to the situation of the particular claimant; very little was excluded from consideration other than the standard of rights protection which a claimant would enjoy in the country where protection was sought. Baroness Hale said that all the circumstances of the case had to be assessed holistically, with specific reference to personal circumstances including past persecution or fear thereof, psychological or health conditions, family and social situations and survival capacities, in the context of the conditions in the place of relocation, including basic human rights, security and socio economic conditions, and access to health care facilities: all with a view to determining the impact on the claimant of settling in the proposed place of relocation and whether the claimant could live a relatively normal life without undue hardship.

28. In considering this matter I look first at the Country Guidance in **AS**.
29. The following were explained to be the relevant factors for a single man relocating to Kabul:

*“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 emphasise that a 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 of one factor may counteract and balance the weakness of another factor):*

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

*231. We consider age as a relevant factor given that we have not seen any reason or evidential basis to depart from the 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 internally relocate to Kabul, a person will be in a more advantageous position if they do have such connections depending on where they are, the 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 of the likely impact of poor physical or mental health on the safety or reasonableness of internal relocation to Kabul but 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."*

30. In this case there are, as indicated, two reports before me, a medico-legal report by Dr Sinha and the country report by Dr Guistoizzi.
31. No criticism was made by Mr Clarke of Dr Sinha's specialist expertise and experience in giving a professional opinion. Mr Clarke accepted that the report showed that the appellant clearly has vulnerabilities. I find the report to be a careful, detailed and measured analysis. The DSM symptom based criteria are referred to and applied. Whilst the doctor did, indeed, see the appellant only once, it is clear that he had other information before him including a psychiatric report dated 14 May 2018 by a Consultant Forensic Psychiatrist who found that the appellant "*showed symptoms of PTSD, mental and behavioural disorder secondary to the use of multiple psychoactive substances and specific needle phobia.*" [16]
32. There is also a letter dated 23 October 2018 from his Probation Service Officer, Ms Johnson (the appellant having been sentenced to 10 months custody in January 2018 for failing to provide a specimen.) She refers to an assessment made on 17 October 2018 by their Senior Assistant Psychologist who said of the appellant: "*... it is clear that [he] is suffering with symptoms of PTSD and bereavement. He disclosed witnessing and experiencing severe trauma in Afghanistan ... He also reported that he has not dealt with the loss of his mother in April 2017 ...*" It was evident to the Probation Service Officer that he had recently self-harmed. She

considered that he needed to be sectioned due to his mental health state. He refused to go to his GP or hospital.

33. At paragraphs [43] and [44] of his report under “Mental State Examination” Dr Sinha finds that the appellant shows symptoms of “*severe depressive disorder*” and currently meets the criteria for a diagnosis of PTSD. Under “Opinion” (from [54]) he goes on to confirm at [56] that the appellant has a “*cluster of symptoms indicating a severe depressive disorder*” and that [57] a “*diagnosis of depressive disorder is clinically compatible with [appellant’s] history of kidnapping, mistreatment, sexual abuse, having to flee the country in fear and his mother dying.*” He observes that the clinical picture is that his level of depression is “*severe.*”
34. And at [58] that he has “*trauma related symptoms, and meets the criteria for a diagnosis of PTSD.*”
35. Further, [60] noting that the appellant had reported suicidal thoughts, the doctor gives the opinion that he “*could potentially develop further significant risk of suicide if he felt certain that he was going to be returned to Afghanistan.*” At [62], “[he] has the following factors which are important in assessing risk of suicide and which are recognised as increasing a patient’s suicide risk: i. “[he] has a clinical picture of depressive disorder and PTSD, ii [he] has expressed hopelessness about his future. Research on hopelessness has identified hopeless thoughts as the biggest risk factor in predicting suicidal behaviour in individuals with depression.”
36. Dr Sinha concludes in this section [64] that the appellant’s “*stated history is a medically plausible explanation of his current mental state.*”
37. In further analysis the doctor finds scars to be “*consistent*” or “*highly consistent*” with his account of being mistreated in Afghanistan.
38. Dr Sinha also gives reasons [81-82] for concluding that the appellant was not feigning or exaggerating his psychological symptoms or distress.
39. In comments under “Risk on Return” [89] the doctor is concerned that if faced with removal or is removed his “*subjective fear of being persecuted would be ‘re-traumatising’ and could exacerbate his depression and PTSD.*” He needs [92] “*ongoing assessment, pharmacological and psychological treatment for his depression.*”
40. Dr Sinha concludes with his “Summary” [101] that the appellant’s diagnosis is of “*severe depressive episode and PTSD*” and that his psychological state needs monitoring because if his ‘stressors’ increase his symptoms are likely to worsen and could exacerbate his depression and PTSD.

41. I see no reason why I cannot rely on Dr Sinha's analysis and conclusions. I find, accordingly, that the appellant has the significant mental health problems indicated. His concerns are, as indicated, given support by the letter of the Senior Assistant Psychologist and the frank comments made a few days later by the Probation Service Officer, Ms Johnson.
42. I would add for the sake of completeness that I find no significance that the appellant did not mention health problems in a screening interview. That brief "screening interview for children" took place in September 2012 when the appellant was aged 15. There was one question asking if he had any medical conditions or disabilities (3.1) to which he said he did not apart from when he was travelling when he got "*nightmares and scared at night.*" As a child who had only arrived in the UK a few weeks before, such a response to a single question on the matter in a brief interview, I find to be wholly understandable.
43. Dr Sinha did not comment on the availability and accessibility of healthcare in Afghanistan as it fell outside his field of expertise.
44. The report of Dr Guistozzi provides several insights into the appellant's particular circumstances in the context of a return to Kabul. As Mr Clarke noted some of the expert's comments were not based on the appellant's evidence, for example, he was not detained because of the family background, (he had not seen his father since 2001) (cf [7] of report); he is not at risk of detention due to political profile as he does not claim to have a political profile; there is no evidence of round ups since about 2013 (cf [9]). However, I note the following which I consider of relevance, and which apart from the number of health care professionals in Kabul which he said was out of date, was not greatly challenged by Mr Clarke:
45. At [24] The cost of living in Kabul is several times more than the cost in the provinces. Unskilled work is the most widely available employment but due to the massive unemployment rates of 35-56%, the appellant's chances of getting work will depend upon his physical strength.
46. A significant amount of the report concerns healthcare. At [27] "*[the appellant] would not receive a level of mental health care even remotely comparable to what he could receive in the UK. Outside a few cities, the provision of mental health care in Afghanistan is almost non-existent ... In 2012 the Kabul health hospital still only has 60 places, although the number of psychiatrists operating there has gone up to 6 (from 2 in 2010). Plans to expand facilities with the building of new hospitals were never implemented...by 2017 the number of partially trained doctors [in mental health care] had gone up from 70 to 101*"
47. At [28] "*If we consider that according to the World Health Organisation as of 2010 about 60% of Afghans suffer from various forms of mental health problems, it is obvious that the chances of having access to care for the average Afghan patient with mental health conditions are slim indeed.*"

48. Dr Giustozzi goes on to explain the difficulties with obtaining medications and to point out that particular therapies for PTSD will not be available outside of the only mental health hospital in the country.
49. At [34] *“Individuals will be considered by the Afghan health service for mental health care assistance if they present themselves to a clinic or hospital of their own will or are brought there by their relatives ... It will not be the case, therefore, of the health service proactively reaching out to [appellant] and he will need to actively seek medical health care. His needs will be assessed against those of the large number of people who suffer from mental health conditions ... It is unlikely that he would then receive more than cursory attention by the medical staff at the country’s only mental health hospital.”*
50. At [36] *“One additional risk would be for [appellant] to suffer marginalisation; people would tend to avoid him if it was evident that he suffers from mental health problems, a fact which would compound his difficulties in seeking accommodation and employment.”*
51. At [37] *“Individuals with symptoms of mental illness are therefore likely to suffer discrimination and face increased difficulties obtaining accommodation, employment and jobs in a new area. An attempted suicide could also lead to internment and/or discrimination as suicide is looked upon very negatively in all Muslim countries.”*
52. I do not find the two brief Home Office responses to information requests greatly to assist. They appear to confirm that while there are psychiatric facilities in Kabul, the more recent (18 June 2018) stating one centre offers treatment for PTSD, and there is inpatient treatment by a psychiatrist at a public facility attached to the university and that various medicines are available, such does not take away from the clear evidence of very limited facilities for the very many in need.
53. I see no reason why I should not attach significant weight to Dr Guistozzi’s evidence on these matters.
54. In line with the relevant factors identified in **AS** I find: the appellant is now 21 years old but in September 2012 when he arrived he was only 15 years old. He is by definition, a “vulnerable adult” in terms of the Joint Presidential Guidance Note No 2 of 2010. In terms of **AS** this is relevant because it means that he is less likely to have been familiar with employment opportunities in Afghanistan and he had not been living independently there (per **AS** at [232]). He has limited education and does not appear to have vocational skills.
55. On the issue of a support network there I found the evidence of his brother to be not wholly satisfactory, there being a vagueness as to how and through whom he learned of their mother’s death in 2017. However,

having noted both Dr Sinha's comments (at [57]) and those of the Senior Assistant Psychologist's referred to in Ms Johnson's letter, namely, that the effect of bereavement following the death of his mother was an additional factor in the appellant's mental health problems, I am prepared to accept that the evidence on this matter was reasonably likely to be true. Also, that the whereabouts of the uncle are unknown. The consequence is a lack of a support network such that he is likely to have increased difficulty in finding accommodation and employment initially.

56. Also, he is likely to be significantly hindered by his mental health problems, not only personally but because of the social stigma referred to by Dr Guistozzi. That there is such is also evident from the WHO article dated April 2017, lodged by Mr Clarke, headed "*Depression a leading cause of ill health and disability: fighting stigma is key to recovery.*" It states that according to recent WHO estimates "*more than a million Afghans suffer from depressive disorders while over 1.2 million suffer from anxiety disorders. Actual figures are likely to be much higher.*"
57. That article goes on to state that the "*Ministry of Public Health has recently trained over 700 professional psychological counsellors and 101 specialised mental health doctors. Of these, 300 are currently in government-run health centres while the others are working for different health NGO's.*" The Minister adds that they "*need to fight the stigma and discrimination associated with depression and other mental health problems and ensure all people have access when they need it.*" Whilst the figures (as Mr Clarke pointed out) appear to update and improve somewhat those older figures given by Dr Giustozzi, it is, nonetheless, apparent that the problems of provision for mental health and the stigma surrounding it remain enormous.
58. Whatever the availability of mental health care in Kabul, Dr Sinha states (at [91]) that the appellant's subjective fear of returning to Afghanistan means that even if there is treatment to access, his fear is likely to exacerbate his depression and PTSD symptoms to the extent that the effectiveness of any psychological treatment would be interfered with. Dr Guistozzi points to the difficulty of the person concerned needing to be the one approaching the health care professionals for assistance. In that regard I note the appellant's unwillingness, despite his clear ill health (including that observed most recently by Ms Johnson, the Probation Service Officer which led her to the view that he should be sectioned) to approach the medical authorities in the UK for help.
59. For the reasons stated, looking at the totality of the evidence in respect of this individual, I consider that it would be unreasonable or unduly harsh for the appellant to relocate to Kabul.
60. The appeal, accordingly, succeeds.

Notice of Decision

61. The decision of the First-tier Tribunal showed material error of law. The decision is set aside and remade as follows:

The appeal is allowed on asylum grounds

An anonymity order is made. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. Failure to comply with this order could lead to contempt of court proceedings.

Signed

Date: 21 December 2018

Upper Tribunal Judge Conway