



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

Appeal Number: HU/02905/2020 (V)

THE IMMIGRATION ACTS

**Heard at : Field House
On : 3 June 2021**

**Decision Promulgated
On : 22 June 2021**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

KHALIL EJTEMAIYEE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Gajjar, instructed by SMA Solicitors

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

DECISION AND REASONS

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was Microsoft Teams. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.
2. The appellant is a citizen of Afghanistan, whose date of birth recorded in the above identity is 10 February 1971. He claims to have arrived in the UK on 26 October 2007, after having left Afghanistan on 13 October 2007. He claimed asylum at the Asylum Screening Unit in Croydon on 29 October 2007, as Khalil Ejtemaiyee born on 10 February 1971 in Afghanistan and was interviewed about his claim on 29 November 2007.

3. The appellant's claim, as initially stated, was based on his problems with the Taliban and the Jamait-e-Islami whom he claimed killed one of his brothers, a commander with the Hezbi-e-Islami, and injured another in 1993. The appellant claimed that he was a Sunni Muslim from Kandahar who married his wife in 1998. His father had held a number of government positions including in the Prime Minister's office and was a member of parliament but later resigned and concentrated on family farms and his business in wholesale medicines in Kandahar. Prior to the Taliban coming to power, the appellant and his family had had to move to Herat from Kandahar, in 1993, because of problems with the Northern Alliance and a particular commander called Hashim, but when the Taliban came to power they moved back to Kandahar, in 1994/95. In 1998 Commander Hashim was reported to the Taliban by the appellant's brother for his activities, and the appellant's brothers acted as witnesses in a case against him, which led to him being convicted and subsequently hanged in 1998. The Taliban wanted the appellant and his brothers to fight for them, so they fled to Kabul to avoid them and the appellant then lived in Kabul from October 1999 until leaving for the UK in 2007. His family moved back to Herat from Kandahar in November 2001. When the Taliban was overthrown, Commander Hashim's brothers went to their home in Herat and spoke to his mother, which led to two of his brothers fleeing the country. The commander's brothers sent warning letters in 2003, 2005 and 2007. In April 2003 one of the appellant's brothers disappeared and in 2007 another went missing. A week later a grenade was thrown into the appellant's home and he fled to his uncle's house and then to Pakistan. He left his wife in Pakistan with his parents and flew to Italy and came to the UK by lorry, accompanied by an agent who retained his passport. He currently had three brothers in the UK and one in Kandahar and his sisters lived in Kandahar with their husbands.

4. The respondent did not accept the appellant's claim and considered it to be a fabrication, refusing it in a decision dated 19 December 2007. However, the appellant's appeal against the respondent's decision was allowed by Immigration Judge Wiseman, in a decision dated 13 February 2008, primarily owing to the fact that two of the appellant's brothers in the UK had been granted refugee status on the basis of the same account.

5. The appellant was then granted refugee status on 3 March 2008 and five years' leave to enter and remain as a refugee until 19 February 2013. He applied for a travel document on 9 May 2008, all in the same identity, Khalil Ejtemaiyee, born on 10 February 1971.

6. However, on 11 August 2008, and again on 25 November 2008, the respondent wrote to the appellant advising him that it had come to light that he had lawful permanent residence in the USA in a different identity, Hikmatullah Ejtimyee, born on 17 March 1974. It was accordingly considered that he was not entitled to refugee status in the UK and that consideration was being given to cancelling his refugee status. He was invited to attend an interview, but he did not attend on the given date.

7. Some years later, after the expiry of his leave to remain, the appellant made written submissions to the respondent, on 7 September 2016, enclosing a witness statement dated 5 September 2016, in which he sought to respond to the previous allegation and requested

that he be granted settlement in the UK as he remained at risk on return to Afghanistan. He stated that he had been awaiting an interview date from the Home Office, following the letters of 11 August 2008 and 25 November 2008, but had not received a date. He had been arranging evidence to confirm that his residence card for the US had been issued for 2 years, from November 2005 to November 2007, and was not permanent residence as considered by the respondent and had in fact expired by the time he had his full asylum interview. He had not applied for settlement at the time of expiry of his refugee status, as he was expecting to hear from the Home Office with an interview date, but had now decided to take the initiative and contact the Home Office himself, having managed to obtain a copy of his US residence card. He had not mentioned his US residence permit at his asylum interview on 29 November 2007 because it had expired by then and he did not think that it was relevant, as the only relevant matter was his fear of returning to Afghanistan. He was still at risk on return to Afghanistan and even more so, as a result of his political activities in the UK and his appearance on TV and radio expressing his views about Afghanistan. He claimed that he had met with Hamid Karzai, who had been to his family home in the UK, and had many pictures taken with him. His family had high political connections and was well-known in Afghanistan, as a result of which he was at risk on return.

8. The appellant subsequently made a protection settlement application on 14 December 2016, relying on his witness statement of 5 September 2016.

9. On 11 June 2019 the respondent sent the appellant notification of intention to cease his refugee status. The respondent stated that it had come to light that the appellant had entered the USA on 7 May 2003 after being issued a visa on 28 April 2003, in the identity of Hikmatullah Ejtimyee born on 17 March 1974. On 23 November 2005 his status was changed to that of permanent residence in the USA and a residence card was issued to him in the name of Hikmat Ullah Ejtimyee, valid until 23 November 2007. The respondent considered that the appellant's failure to mention his US residency when he claimed asylum cast doubt on his claim. The respondent stated that Home Office checks had confirmed that in two entry clearance applications made from New York to come to the UK the appellant had stated that he had a wife and daughter who were US nationals and that he would be visiting his brother in the UK. He provided his Afghanistan passport which was issued in the identity of Hikmatullah Ejtimyee, born on 17 March 1974, valid from 11 May 2005 to 10 May 2010. That information was different to that given for his asylum claim where he gave a different name and date of birth, he claimed to be married to an Afghan national with no children and he claimed to have never been issued with a passport or applied for or been issued with a visa for any country including the UK. Photographic evidence showed that both were the same person. The respondent therefore proposed to cancel the appellant's refugee status on the basis of misrepresentation of material facts. The appellant was invited to respond.

10. Written representations were made on behalf of the appellant on 8 July 2019, in which it was asserted that the new information known to the Home Office would not have made a material difference to the outcome of the appeal before the immigration judge or the grant of refugee status, as the findings made by the judge related to events which occurred

before the appellant left for the USA. In a witness statement dated 19 June 2019 accompanying the written representations, the appellant stated that he had been granted a two-year residence permit in the USA on the basis of his arranged marriage to Gul Tokhi, whom he had divorced in 2007. The Afghan passport in the identity of Hikmatullah Ejtimyee born on 17 March 1974 was a forged passport, obtained for him by his uncle in Afghanistan so that he could travel to the USA, and he had therefore stated the truth at his asylum interview, that he had never had his own Afghan passport. The appellant stated again that he was well-known in Afghanistan and had been politically involved in the UK, appearing on TV. He also produced a statement from the nephew of President Karzai supporting his claim to be at risk on return.

11. The respondent then informed the UNHCR, in a further letter dated 3 October 2019, of the intention to cancel the appellant's refugee status under paragraph 339AB of the immigration rules. A response was invited, to which the UNHCR replied on 9 December 2019, urging the Home Office to interview the appellant and make a thorough assessment of the misrepresentations and an evaluation of his intentions, as well as the international protection needs of the appellant.

12. On 13 January 2020 a decision was made to cancel the appellant's refugee status. The respondent noted in that decision that the appellant had had the opportunity to claim asylum in the USA or to seek to extend his residence there on the basis of parental access to his daughter, but he had instead allowed his residence to lapse for unknown reasons. The respondent considered that the appellant had omitted material facts with regard to his previous life and permanent residence status in the USA and that that, together with the fact that he had obtained his visit visa for the UK around the time he claimed to be back in Afghanistan, seriously undermined the credibility of his asylum claim. The respondent considered that the appellant had deliberately withheld information in order to enhance his chances of being granted refugee status and that had these facts been known, his appeal may not have been allowed. The respondent did not accept the appellant's claim that the Afghan passport used to apply for his entry to the USA was a forgery and considered that the identity in that document was his true identity rather than that given in his asylum claim. The respondent concluded that the appellant's refugee status should be revoked and granted him a right of appeal against that decision under section 82 of the Nationality, Immigration and Asylum Act 2002. The appellant did not appeal against that decision.

13. On 6 February 2020 the respondent made a further decision, refusing the appellant's settlement protection application and human rights claim of 14 December 2016. The respondent refused the appellant's application for indefinite leave to remain as he failed to meet the requirements of the immigration rules in paragraph 339T(i) with reference to paragraph 339R(ii) as his refugee status had been revoked. The respondent considered further that the appellant failed to meet the requirements of paragraph 339R(iii) as he had used a false identity to claim asylum in the UK. The respondent considered that the appellant did not meet the requirements of the immigration rules in paragraph 276ADE(1) on the basis of his private life and that his application fell to be refused under the suitability provisions in section S-LTR of Appendix FM, in S-LTR.1.6 and S-LTR.2.2. It

was considered that there were no very significant obstacles to the appellant's integration in Afghanistan and no exceptional circumstances outside the immigration rules.

14. The appellant appealed against that decision on Article 2, 3 and 8 grounds and it is that appeal, and the decision of the First-tier Tribunal promulgated on 16 October 2020 dismissing his appeal, which is the subject of these proceedings.

15. The appellant's appeal came before First-tier Tribunal Judge Moon on 12 October 2020. The appellant's evidence before the judge was that he had gone to the USA in 2003 to join his fiancée who then became his second wife, travelling there on a forged passport obtained by his uncle, and that he had used the forged passport to obtain a new passport in New York. He had been granted a spouse visa extended to November 2007. He had a child with his second wife. He travelled to the UK to see his brothers three times, using the new passport obtained in New York, which contained his false details. The visas had been obtained using an agency. In 2005 his wife persuaded him to visit his parents in Afghanistan, but when he came back to the USA she had left him and he was later divorced from her in 2007. At some point between September 2006 and October 2007 he returned to Afghanistan and patched things up with his first wife. It was at that time that one of his brothers disappeared and a week later the grenade was thrown into the house where he was living with his first wife. He therefore feared being killed and decided to leave Afghanistan. He came to the UK and provided his correct name and date of birth.

16. At the hearing it was conceded that the respondent's case gave rise to a reasonable suspicion of dishonesty, but it was argued that the appellant had provided an innocent explanation. However, the judge did not accept that there was an innocent explanation which reached the minimum level of plausibility for the different identities given in the 2006 visit visa application and the 2007 asylum claim. The judge did not accept the claim that the appellant's non-disclosure about the USA could be adequately explained by his mental state following his separation from his second wife. Neither did the judge accept the submissions made on behalf of the appellant that the non-disclosure was immaterial. The judge found that the appellant's failure to claim asylum in the USA and his subsequent return to Afghanistan after living in the USA were factors that would have been material in determining whether he feared for his life in Afghanistan and, in any event, she considered that the relevant issue was not whether the appellant's asylum claim was true but whether paragraph 399R of the immigration rules applied.

17. It was argued on behalf of the appellant that there were very significant obstacles to his integration into Afghanistan because he still feared the Taliban and the Northern Alliance faction, that he had been absent from Afghanistan since 2007 and that he had been westernised in the time he was in the USA and the UK in that he consumed alcohol, had relationships and did not practice his religion. The judge considered that the appellant fell within the suitability provisions under S-LTR 1.6 and therefore could not meet the requirements of paragraph 276ADE(1) on that basis, but that in any event there were no very significant obstacles to the appellant's integration in Afghanistan. The judge concluded that the respondent's decision did not amount to a disproportionate

interference with the appellant's private life in the UK and that it did not breach his Article 8 human rights and she accordingly dismissed the appeal on human rights grounds.

18. The appellant sought permission to appeal the decision on two grounds: firstly, that the judge had made irrational findings and had failed to apply the correct test for dishonesty by giving no consideration to the appellant's intentions; and secondly, that the judge had failed adequately to consider material factors, namely the underlying asylum claim which was separate to the alleged deception and included the appellant's fear of the Taliban and the fact that his two brothers had been granted asylum on the same basis as his own claim.

19. Following the grant of permission by the Upper Tribunal, the respondent filed a Rule 24 response, prepared by Mr Ian Jarvis for the Secretary of State, in which it was submitted that it was relevant to note that the appellant had not appealed against the 13 January 2020 decision, which applied paragraph 339AB of the immigration rules, and had therefore declined to challenge the revocation decision by reference either to the Refugee Convention or the Qualification Directive. The appeal had been against the decision of 6 February 2020, which was the refusal of the application for indefinite leave to remain as a person granted refugee status under paragraph 339R, on the basis of his residence permit having been revoked (paragraph 339R(ii)) and his conduct making it undesirable to grant leave to remain (paragraph 339R(iii)(f)) and the refusal of his Article 8 human rights claim. It was submitted, with regard to the first ground that the judge was entitled to conclude that the allegation of deception was properly made out in accordance with the appropriate test. As for the second ground, the failure of the judge to directly address the appellant's claim that he feared various armed actors in Afghanistan was not a material error since that element of the claim could not have led to a different decision, in particular as the appellant had not pursued that ground by way of appealing the protection decision or by relying on Article 3, but had appealed solely on the grounds of very significant obstacles under paragraph 276ADE(1).

20. The matter came before me on 11 March 2021 and I heard submissions from both parties in relation to both grounds of appeal. In a decision promulgated on 15 March 2021, I found that Judge Moon had materially erred in law and I set aside the decision on the following basis:

"Discussion and conclusions

25. I find no merit in the first ground relating to the deception issue, and indeed Mr Gajjar properly acknowledged that it was the second ground which was the stronger one. I agree with Mr Kandola that, whether or not the case of Ivey is applicable in setting out the correct test for establishing dishonesty and deception, the fact is that the judge properly directed herself on the matter and provided full and cogent reasons for making the adverse findings that she did. At [27] to [33] the judge gave detailed consideration to the appellant's explanation for the alternative identity in his visa applications and the Afghan passport he had used and provided proper reasons for rejecting that explanation. Likewise, at [34] to [39], the judge carefully considered the appellant's explanation about his residence in the USA and his reasons for not disclosing that when he made his asylum claim in the UK, and again

provided cogent reasons for rejecting his explanation and reasons. There was nothing irrational or unreasonable about the issues taken against the appellant and the judge was fully and properly entitled to reach the adverse conclusions that she did.

26. As for the second ground, as I pointed out to Mr Kandola at the commencement of the proceedings, I had difficulty in reconciling Mr Jarvis's submissions at [23(d)] and [23(e)] with the grounds of appeal before Judge Moon, as the grounds clearly included Articles 2 and 3 and the risk to the appellant on return to Afghanistan from his previous persecutors, separately, and in addition to, the issue of 'very significant obstacles to integration' under Article 8. At [41], Judge Moon referred to the appellant's claimed fear from the Taliban and the Northern Alliance under the heading of 'very significant obstacles', yet not only was there no separate protection and Article 3 assessment in her decision, but the only assessment made in regard to risk on return was, as Mr Gajjar properly submitted, in relation to the risks arising from being westernised. As Mr Kandola properly accepted, it was incumbent upon the judge to consider all matters raised in the grounds of appeal. The fact that the appellant did not appeal against the cessation decision of 13 January 2020, and the fact that the decision of 6 February 2020 relied upon paragraph 339R to refuse the appellant's application for indefinite leave to remain under the protection route, did not preclude the respondent or the Tribunal from considering the current protection issues and the Article 3 claim.

27. As I advised the parties at the hearing, I cannot see how the judge's failure to consider Article 3 can be said to be immaterial, particularly when a previous Tribunal found the appellant to be at risk on return, albeit in a decision made without knowledge of significant and material facts. It may well be that, upon a full consideration of the appellant's claim which includes the matters now known to the respondent and the Tribunal, the same outcome is reached, but that cannot be considered to be an obvious outcome without the matter being fully and properly assessed.

28. Accordingly, Judge Moon's decision has to be set aside. Mr Gajjar requested that the matter be remitted to the First-tier Tribunal as there would need to be findings of fact made on the appellant's claim. Mr Kandola was ambivalent on the matter. Whilst it is the case that, where fresh findings of fact need to be made, a remittal is usually appropriate, this is not a completely *de novo* hearing. The cessation decision has not been appealed and remains in place, as do the judge's findings and conclusions on deception and dishonesty. In such circumstances it seems to me that the case ought to be retained in the Upper Tribunal.

29. The matter will therefore be listed for a resumed hearing in the Upper Tribunal, to consider the appellant's human rights claim."

Hearing and Submissions

21. The matter then came before me for the decision to be re-made.

22. The appellant gave oral evidence before me, adopting his witness statement of 21 July 2020. He was cross-examined at length by Mr Clarke. He confirmed that the passport he had used to enter the US was false and contained his nickname rather than his correct name and the wrong date of birth. His uncle had obtained the passport for him. He had used the passport to visit the UK on two occasions in 2006. The passport had been checked by the immigration controls in the US and the UK. On the third occasion he visited the UK

he travelled on a new passport that he had obtained in the US. He went from the US to Afghanistan in around September 2006. The appellant confirmed that his three brothers had supported his asylum claim in 2007. They provided witness statements for the appeal but did not appear in person. They had not appeared at the hearing today because his solicitor had told him that there was no need for them to do so, but they would come if called. The appellant confirmed that when he returned to Afghanistan in 2006 he lost his passport with the two-year US residence permit, so his uncle obtained another false passport. He managed to obtain a copy of the US residence permit later, through his cousin. Mr Clarke suggested to the appellant that he had entered the UK lawfully on a valid visa with a genuine passport and had made a false asylum claim in a false identity supported by false evidence from people purporting to be his brothers who had not provided any supporting identification. The appellant denied that that was the case and said that they were his brothers.

23. The appellant confirmed that his television appearances, where he expressed views on trying to obtain peace in the country, had been in 1992 and 1993 and that he had not done anything since then. He said that pictures of him with Hamid Karzai, the ex-President of Afghanistan, had however gone viral in 2016. Mr Clarke asked the appellant why his brothers had not based their asylum claim on such high profile connections, to which he replied that those people were not in government at the time they made their claims. The Home Office had not asked his brothers about their father, whereas he had been specifically asked about that when he produced the photographs. As for the letter from Hamid Karzai's nephew, that was genuine. Karzai's nephew had gone with him to his solicitor's office. He had stayed with him for five days and they went to the solicitor together. When asked by Mr Clarke why, if he was as wealthy as claimed, and owned as much land as claimed, he had not brought his wife to the UK and had given an explanation that he could not afford to do so, the appellant said that his family had been wealthy but their land was taken from them. Although they had got the land back, it had been occupied as a British base until recently and was in any event split between the Taliban and the government areas. Further, he was not working here and was dependent upon his brothers. As for the copy of the taskira he had produced for the Tribunal, that was a genuine document. The appellant showed the original document. He said that if he went back to Afghanistan he would not be able to work as he would be killed or would disappear at the hands of the Taliban. He had no family left in Afghanistan, aside from his father who was 87 years old. His family was otherwise in Pakistan, the USA and the UK.

24. Both parties then made submissions before me.

25. Mr Clarke's submission was that the true case was that the appellant had had a genuine passport with which he had travelled between the US and the UK, that he had entered the US in 2003 on a genuine passport and had subsequently entered the UK on a visit visa which ran out, and that he had then claimed asylum a month later in a false identity. His account of returning to Afghanistan in 2006, losing his passport with the US residence permit, and coming to the UK with an agent in October 2007 was not true. The appellant had a right of residence in the US until at least November 2007 and a valid passport and therefore had no need to leave Afghanistan on a fake passport in October

2007 as he claimed. His alleged brothers had never come forward to explain why they were supporting a claim in 2007 when they knew full well that the appellant had been in the UK for some time. Mr Clarke relied upon the case of Hussein and Another (Status of passports: foreign law) [2020] UKUT 250 in submitting that the appellant's passport was genuine, having been found as such by the US and UK authorities. He submitted that this was a sham claim where deception had been used by the appellant and that had been confirmed by the First-tier Tribunal in findings which had been preserved. The appellant had made no effort to bring his wife to the UK, despite having stated that he was wealthy, and the reason for that was that he had never been back to Afghanistan but had been in the UK with a visa. No weight should be given to the taskira as it had not been verified, whilst the passport claimed to be fake should be considered as genuine. The appellant had had no political connections for 30 years and there was no evidence that his current links had gone viral. The letter allegedly from Hamid Karzai's nephew was not a genuine document and the people alleged to be the appellant's brothers were not his brothers. The fact that the appellant made no asylum claim when he was in the US, at a time when he said that threatening letters were sent to his home, showed that he was not genuine. On the basis of the new evidence, which was not before Judge Wiseman in 2008, the positive credibility findings did not have to be upheld. There was no Article 3 risk to the appellant on any basis and no very significant obstacles to his integration in Afghanistan.

26. Mr Gajjar submitted that notwithstanding Judge Moon's preserved findings on deception, the findings of Judge Wiseman on risk on return to Afghanistan could be upheld. Judge Wiseman's decision had led to the grant of asylum and was the starting point, following the guidance in Devaseelan [2002] UKIAT 000702. The appellant's concealment of his residence in the UK did cause problems, but his evidence otherwise had the ring of truth. There were photographs showing the appellant with high-ranking politicians and he was not to be considered as having a low-level profile. There had been no previous suggestion that the appellant was not related to his brothers and it was clear that the relationships were genuine as he had referred to them when applying for his visit visas and they had referred to him in their own protection claims. The appellant's credibility was therefore not undermined by his failure to explain his presence in the US. The appellant's explanation as to why he needed a false passport and how he had lost his documents was a credible one. The appellant had given a credible explanation about his financial situation. His taskira showed his true identity. His account of how he obtained the letter from Hamid Karzai's nephew was credible. On the basis of the appellant's account being credible, it was clear that he was at risk on return to Afghanistan and would not be able to relocate to Kabul as he had no connections there. The appeal should be allowed.

Discussion and Findings

27. Having set aside Judge Moon's decision on the limited basis that I did, the question before me in re-making the decision in the appellant's appeal is whether or not he is genuinely at risk on return to Afghanistan for the reasons given by Judge Wiseman, namely as a result of events which occurred in 1993 and then from 2001 related to his

brother's involvement with a Commander Hashim and their part in his trial and execution and, more generally, as a result of his family's high profile background.

28. Mr Clarke made quite forceful submissions on the appellant's lack of credibility and fraudulent claim, his case being that the appellant had never returned to Afghanistan after coming to the UK on his second visit visa and that he was actually in the UK at the time of the events he claimed to have occurred in October 2007 in Afghanistan. I find considerable force in that submission, although I would not agree with his additional assertion that the appellant's account of his relationship with his three brothers in the UK was also a fabrication, since that had never been claimed before and the relationship had always been part of the unchallenged evidence. Having repeatedly read through the appellant's four statements and considered his oral evidence before me, I would agree with Mr Gajjar that his evidence had the ring of truth about it, but it is also apparent to me that there are deliberate lacunae in the evidence which suggest that the appellant has expanded upon true experiences in order to make out a viable and current claim.

29. In accordance with the guidance in Devaseelan, I take as my starting point the decision of Judge Wiseman in February 2008. It is clear from that decision that the judge's conclusion, that the appellant was at risk, turned ultimately upon the fact his brothers had been granted refugee status on the basis of a similar claim. That is made clear at paragraphs 10.10, 10.16 and 10.21 to 10.27. The appellant's account of the events of October 2007 leading to his flight from Afghanistan at that time is addressed at paragraphs 10.17 to 10.19 and the judge's acceptance of those events is clearly based upon the brothers' claims in regard to earlier events having been accepted.

30. The question is whether Judge Wiseman would have made the same decision had he known that the appellant had not been in hiding in Kabul, as stated at paragraph 7.9, but had been living in the US from 2003, had returned to Afghanistan on several occasions to visit his parents, and had visited the UK several times, making no attempt during that time to seek international protection, even after his marriage to a US citizen had ended and prior to his US residence permit expiring and that he had lied to the UK authorities about those details.

31. Mr Gajjar's case is that that would have made no difference to Judge Wiseman's decision and did not detract from the appellant being at risk on return to Afghanistan, since the events giving rise to that risk and to his fear of return took place before he went to the US and after his return to Afghanistan from the US. The problem the appellant faces, however, is that his credibility as a whole has been undermined by a finding that he deliberately concealed information and exercised deception. That was the finding of Judge Moon in her decision of 16 October 2020 and that finding has been preserved. Having had the benefit of reading through the papers in this case once again for the resumed hearing, I reach the same conclusion that I did at [25] of that decision in upholding Judge Moon's findings in that regard and I completely endorse her decision. This was not a case of the appellant merely remaining silent about a period of residence in the US, but he actively lied on several occasions in making his claim: in his screening interview when he claimed to have no children, to have never applied for a visa to enter any country and to have

never had an identity card or passport; in his asylum interview when he claimed, directly or indirectly, to have remained continuously living in Afghanistan prior to coming to the UK (questions 82, 106 and 142) and when he claimed never to have applied for a visit visa for the UK (question 133); and in his statement of 23 January 2008 when he stated at [8] that he lived in Kabul from October 1999 until leaving for the UK in 2007. Given that Judge Wiseman made it quite clear at paragraph 10.21 that his decision depended upon there being only a modest standard of proof and that there was no reason to depart from the decisions made for the appellant's brothers, it seems to me that it cannot be said that he would have reached the same decision had he known the true facts.

32. Turning to the question, therefore, of whether, on my own findings, the appellant has demonstrated to the lower standard of proof that he is at risk on return Afghanistan, I conclude that he has not. Whilst his brothers were found to be at risk on the basis of their involvement in Commander Hashim's fate, that was a matter determined around 20 years ago, since when the situation in Afghanistan has changed substantially. Although Judge Wiseman accepted that that risk remained in October 2008, that was based upon additional events which the appellant claimed took place in April 2003 and more recently in October 2007, namely the disappearance of another brother and a grenade being thrown into his house and the appellant having remained in hiding in Kabul. The respondent at that time submitted that that was a fabrication, but Judge Wiseman accepted that it was true. However, based upon the evidence now available about the appellant's passport and residence in the US, Mr Clarke submits again that it was not.

33. For the account to be true, the appellant asks the Tribunal to accept his explanation that he had never had his own, genuine Afghan passport and that the passport he used to travel to the US in May 2003 was a forgery, obtained by his uncle; that he managed to use that passport to obtain a renewed passport in New York in the same false identity and then travel between the US and the UK on at least two occasions and between the US and Afghanistan and Pakistan on several occasions without any problems at the immigration controls; that he then lost the second passport containing his US residence permit in Afghanistan in 2006/7 but somehow managed to obtain a copy of the residence permit several years later in 2016 through his cousin; and that his uncle obtained another false passport for him in October 2007 which was then retained by the agent who brought him to the UK. I have to agree with Mr Clarke that that account is not plausible or believable, even to the lower standard of proof. I do not find it credible that an educated man with the profile and background of the appellant would never have owned his own passport. I agree with Mr Clarke that the most believable explanation is that the passport used in the US containing the US residence permit was the appellant's own, genuine passport containing his true identity and I find that the reason why the appellant claims to have lost it is that it contains evidence of the actual periods spent in Afghanistan and in the UK which are not consistent with his account of the events in October 2007 in Afghanistan. Further, I do not accept that a person such as the appellant would never have had a national identity card, as he claimed in his screening interview at 9.2, and indeed, his claim never to have owned one undermines his current claim that his true identity is confirmed in the taskira now produced, a claim which I reject.

34. In addition to the above, just as there was an evident lack of detail in the appellant's account given prior to the discovery of his residence in the US, in relation to his movements and the events between 2003 to 2006, there is, in his subsequent evidence, a notable absence of information about his circumstances between 2006 and October 2007. Despite the detailed accounts given in the appellant's statements of 5 September 2016, 19 June 2019 and 21 July 2020 and the written representations dated 8 July 2019 and skeleton argument of 21 July 2020, there is a clear gap in the chronology of events and in none of those accounts is any information given as to when the appellant returned to Afghanistan prior to the October 2007 incidents and what he was doing in Afghanistan during that time. I note from [8] of Judge Moon's decision that the account of that time remained undetermined and vague and, likewise, the appellant's evidence before me varied between September 2006 and 2007. As Mr Clarke submitted, the appellant's account of having returned to Afghanistan to make up with, and reunite with, his first wife is undermined by the fact that he made no application for her to join him in the UK with their daughter once he had leave to remain as a refugee. All of these concerns add weight to Mr Clarke's submission that the appellant was not in fact in Afghanistan at all during that period but had remained in the UK after his last entry to visit his brothers and that the claimed incidents of October 2007 were a fabrication.

35. For all of these reasons I do not accept that the appellant has provided a credible account of having returned to Afghanistan and then fled from the country due to further adverse interest in his family several years after the incidents which led his brothers to flee. The appellant has failed, in my view, to show any reason for there to have been an ongoing adverse interest in him since the events leading his brothers to flee, some 20 years ago. Indeed, the appellant's own account of having returned to Afghanistan on several occasions to visit his family undermines his claim to have been in fear for his life, as does the fact that he made no effort to extend his residence permit in the US or to seek to regularise his status in that country after his marriage failed, when he had an opportunity to do so. Accordingly, even if he had returned to Afghanistan before coming to the UK, I do not accept that the events in October 2007 occurred as claimed.

36. Indeed, the reasons given more recently by the appellant for fearing returning to Afghanistan have had a somewhat different focus. Aside from the references to the old enemies and threats, at [25] of his most recent statement of 21 July 2020, his evidence in that statement referred in some detail to his fear as a result of being westernised and having been absent from Afghanistan for many years. That was fully and properly addressed by Judge Moon and did not form part of the error of law in her decision. The appellant's evidence before me reflected that set out in his statement of 5 September 2016 and 19 June 2019 regarding the risks to him in Afghanistan due to his family's links to high profile political figures, dating back to his father's activities and friendship with the King, his own television appearance in Kandahar and more recently his associations in the UK with leading politicians such as Hamid Karzai and his friendship with Hamid Karzai's nephew. At this point I refer again to Mr Gajjar's submission that the appellant's evidence had the ring of truth about it and it is in this respect that I accept the appellant's account of his family background and his current associations. However, the appellant's father's activities took place between 1965 and 1974, the appellant's appearances on television in

Kandahar were in 1992 and 1993 and, as already discussed, his brothers' problems were in 2000 and 2001, none of which provide any proper basis for concluding that the appellant would be at risk at the current time. As for his current associations, whilst these are not disputed, I cannot find anything in the appellant's evidence to show why that would put him at risk in Afghanistan. The appellant's evidence before me was that he would be made to disappear or be killed by the Taliban if he went back to Afghanistan, but his reasons for so concluding were generalised and vague and were not based upon any specific evidence. There is no evidence of any particular political involvement other than his family's association with the former President. His fear is not supported by the country guidance in AS (Safety of Kabul) Afghanistan CG [2020] UKUT 00130 where the headnote states:

“Risk on return to Kabul from the Taliban

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

37. There is no suggestion in the country guidance that an association with the former President would be a risk factor and the appellant has no background of persecution by the Taliban. The letter from Ezatullah Karzai does not amount to evidence of any weight and is simply an opinion which lacks any detail or reasoning as to the claimed risk on return. The appellant claims that he would not be able to survive in Kabul, but the country guidance suggests otherwise, particularly as he has spent periods of time living there and has had family connections there, that he has worked there previously and that he would be able to find work and re-establish himself there. His previous appeal was allowed on the basis of his brother's involvement in Commander Hashim's demise and not on the basis of his family associations with high profile politicians, irrespective of the fact that those politicians were not in power at the time his brothers were granted refugee status.

38. For all of these reasons I conclude that the appellant has failed to demonstrate on any credible basis that he would be at risk on return to Afghanistan and that his removal to that country would breach his Article 3 rights. For the same reasons I do not accept that he has demonstrated any very significant obstacles to integration into that country, despite his lengthy absence, or any compelling circumstances outside the immigration rules on wider Article 8 grounds. The appeal is accordingly dismissed on all grounds.

DECISION

39. The original Tribunal was found to have made an error of law in relation to the appellant's Article 3 claim and the decision was set aside on that limited basis. I re-make the decision by dismissing the appellant's appeal on all grounds.

Signed *S Kebede*
Upper Tribunal Judge Kebede

Dated: 4 June 2021