



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00422/2017 (V)

THE IMMIGRATION ACTS

Heard remotely by Skype via Field House
On 5th February 2021

Decision & Reasons Promulgated
On 11 March 2021

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

AF
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Smyth, instructed by Kesar & Co Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Afghanistan born on 1st January 2000 who arrived in the UK as a minor in 2016 and claimed asylum on arrival on the basis of his fear of the Taliban. He claimed the Taliban had threatened his father by reason of his membership of the Ahmadzai Shora as a village elder in his home area in Baghlan

province. The UNHCR Guidelines dated 30th August 2018 referenced village elders as being a risk category.

Immigration History

2. The Secretary of State in her letter dated 23rd December 2016 gave detailed reasons for the refusal of the appellant's asylum, humanitarian protection and human rights claim. The respondent accepted that the appellant's father was an Ahmadzai Shora but rejected the claim that he had received threats from the Taliban. Although the appellant's claim regarding the threat from the Taliban was addressed briefly, the Secretary of State's refusal concentrated on the possibility of internal relocation, and referenced **HK & Ors (minors - indiscriminate violence - forced recruitment by Taliban - contact with family members) Afghanistan CG [2010] UKUT 376 (IAC)** stating that:

"Where a child has close relatives in Afghanistan who have assisted him in leaving the country, any assertion that such family members are uncontactable or are unable to meet the child in Kabul and care for him on return, should be supported by credible evidence of efforts to contact those family members and their inability to meet and care for the child in the event of return."

It was considered that as the appellant had been assisted by his mother and maternal uncle in leaving Afghanistan, he had failed to provide credible evidence to suggest his family would be unwilling or unable to care for him on his return.

3. The appeal came before First-tier Tribunal Judge Woolf, who dismissed the claim on all grounds on 10th April 2017. There was a challenge made to that decision on the basis that the judge had made material errors of law, not least that the judge did not adopt the correct legal approach to considering the evidence of a minor when assessing credibility. Upper Tribunal Judge Jordan, when setting aside the decision of the First-tier Tribunal on 26th March 2018, stated:

"[The appellant] and his father and the family were part of the Ahmadzai tribe and came from a village in Baghlan province. His father was a member of the Ahmadzai Shora, which is a committee of notables from different provinces in Afghanistan who participate in a form of government. There is no doubt that the appellant's home area is controlled by the Taliban and it was his case that his father was threatened by the Taliban because they saw members of the Ahmadzai Shora as supporters of the government. That seems both plausible and, according to the judge, credible. In the result the judge was satisfied, according to paragraph 55 of the determination, that it was reasonably likely that the appellant's father came under threat to leave his post as a member of the Ahmadzai Shora and, accordingly, I think the inevitable consequence of that was that the appellant's family were at risk in the home area."

At present I do not see it was a finding made by the judge that the appellant himself as a minor could return to an area which is under the control of the Taliban, all the more so if his father had a position as a member of the Ahmadzai Shora. It followed from this that the issue before the Tribunal was whether or not it was reasonable, (the expression

'unduly harsh' is sometimes used as a synonym), for him to relocate as a minor to Kabul.

...

However, it was simply not enough to render the appellant's relocation to Kabul as reasonable or not unduly harsh. It would require specific findings that the appellant as a minor could have returned to Kabul where he would have contacted a member of his family, either his mother or father or more distant relatives. In normal circumstances it would be a perfectly proper inference to draw that if a family member were confronted with a telephone call from a minor who could not return to his home area that the family member would make efforts to provide the safety net that the minor requires but there has to be a thoroughgoing enquiry as to whether that is possible."

4. The matter was remitted to the First-tier Tribunal and came before Judge Sullivan on 16th April 2019. Her determination was promulgated on 9th May 2019. That decision was challenged, permission to appeal granted and my error of law decision dated 29th August 2019 set aside Judge Sullivan's decision and preserved no findings in relation to the assessment of risk on return.
5. Further evidence was provided for the resumed hearing including inter alia, the appellant's GP medical notes, a report of Dr Hartley, clinical psychologist dated 7th September 2020, a Pathway Plan for the appellant dated June 2020, a letter from the Red Cross dated 1st August 2019, a witness statement of Atiqullah Sherzad dated 27th January 2021 and a further witness statement of the appellant dated 27th January 2021. Additionally, there was further country background material particularly referencing Afghanistan and the Covid crisis.
6. Mr Smyth in his submissions relied on the three bundles before the Tribunal, those submitted for the First-tier Tribunal hearings and a further third bundle submitted for the purposes of this hearing and in particular a witness statement of the appellant dated 27th January 2021 and two further witness statements from the appellant's friends Mr Mohammed Haroon and Mr Ali Jabarkhail attesting to the appellant's epileptic attacks. Those statements were not signed and dated. This, he said, was due to the COVID-19 restrictions but Mr Jabarkhail attended and was willing to give evidence at the hearing. He was not, in the event, called.
7. At the hearing, Mr Smyth submitted that it was open to the appellant to adduce further evidence to allow me to depart from earlier findings of the First-tier Tribunal following the authority of **AZ (error of law: jurisdiction; PTA practice) Iran [2018] UKUT 00245 (IAC)**, which held that pursuant to section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007, the Upper Tribunal has jurisdiction to depart from, or vary, its decision that the First-tier Tribunal made an error of law, such that the First-tier Tribunal's decision should be set aside under section 12(2)(a). That jurisdiction however would only be exercised in very exceptional cases.
8. Mr Melvin made further written submissions on 4th February 2021, objecting to the admission of further witness statements from the appellant and two of his friends

attesting to his seizures. He observed the solicitors had ample opportunity to adduce this evidence in the near eighteen months since the last hearing. At the hearing Mr Melvin repeated his objection to the inclusion of the appellant's and two further witness statements from the appellant's friends.

9. Nevertheless, in the interests of justice, I admitted all the further evidence. The pandemic had delayed consideration of the appeal and updated material was significant. I considered that submissions by the representatives could be made as to the weight to be attached to the witness statements from the appellant and friends. The difficulty with the submission from Mr Smyth in relation to AZ is that permission was only granted in relation to the ability of the appellant to relocate. That said as indicated below, I have approached the findings of the First-tier Tribunal with the guidelines given in Devaseelan v SSHD [2002] UKIAT 00702 in mind.
10. Mr Smyth confirmed that the appellant could speak good English and there was no requirement for an interpreter, but he did not intend to call the witness and Mr Melvin made no request to cross-examine the witness.
11. Mr Melvin made oral submissions and relied on his written submissions as follows. The appellant was now a 20-year-old healthy male not at risk of persecution from the Taliban in Kabul and the decision should be made pursuant to the updated country guidance AS (Safety of Kabul) Afghanistan [2020] UKUT 130 (IAC). The appellant did not come into any of the categories of risk and was not affected by indiscriminate violence. Mr Melvin submitted that with regard to reasonableness of internal relocation it would not be unduly harsh for the appellant to return to Kabul even without specific connections, a support network or even without a taskera. The First-tier Tribunal had found the appellant was not a credible witness in relation to his personal history, his journey and the claimed lack of contact with his family members. The appellant would be able to obtain financial and emotional support from his family members, who albeit do not reside in Kabul would be able to assist him as they did financially when sending him to the UK.
12. The appellant had language and educational and vocational skills in that he could speak Pashtu and Dari and attended education in Afghanistan to year 9 and had been attending college and studying English and mathematics in the UK. He was currently living with a friend. No evidence had been provided to show that he was unable to undertake manual work to support himself in Kabul.
13. Following the submission of further medical evidence, Mr Melvin was astonished that no medical evidence had been provided in the many previous hearings before the Tribunal. With regard to the medical evidence the appellant used to take levetiracetam daily to control his seizures which he stopped in November 2018 and now confirmed that he had had three or four more seizures this year, but it appeared that the medication was available in Kabul as confirmed from the solicitor's interpreter who had contacted pharmacies in Kabul. The consultant neurologist Dr Meera Sabeka had confirmed to his GP on 4th February 2019 that the appellant had

attended for a review previously and was diagnosed with symptomatic epilepsy, but this medication was ceased in November 2018, him having stopped the seizures. Thus, the seizures had ceased, the medication was stopped, and he was discharged from neurology.

14. Dr Patel of the Guildhall Surgery dated 4th November 2020 (at the request of Kesar & Co Solicitors) confirmed that the appellant had restarted levetiracetam but that he had no mental health issues outside sadness and isolation and wondering about his family.
15. The opinion of Dr Hartley, the psychologist who met the appellant on 24th August 2020, was that the appellant was not suffering from any diagnosable mental health condition.
16. The respondent was concerned that the Tribunal was not getting the full picture of the seizures claimed by the appellant. Outside his anxiety about his immigration status there were no mental health issues. According to the Pathway Plan the appellant was enjoying his time in the UK, in education and living independently without problems. The belatedly disclosed medical records showed some concern and treatment with medication but there were no concerns that his seizures could not be treated by medication. Dr Hartley's report recommended an assessment by a neurologist and a neuropsychologist to investigate and determine the extent, nature and cause of the symptoms that he reported but the appellant had seen a neurologist. Dr Hartley commented on whether the appellant should avoid heavy lifting or operate heavy machinery and that he could not perform manual work, but the respondent rejected this submission without further expert evidence. The GP had not indicated any further need.
17. The appeal showed that at its highest the appellant had suffered occasionally from seizures that were managed with medication.
18. The respondent also referred to the CPIN on Afghanistan issued by the respondent in December 2020 which outlined socio-economic factors and the unemployment rate in 2017 of approximately 23.9%. The labour force was estimated at 8,478,000 in 2017 with 44% in agriculture, 18.1% in industry and 37.6% in services. The CPIN outlined medical and healthcare services which included neurological conditions at section 14.1.1 and that MedCOI had advised that inpatient or outpatient specialist treatment by a neurologist was available at the Ali Abad Hospital in Kabul.
19. At 14.1.3 MedCOI showed that antiepileptic drugs were available including levetiracetam. In fact, the respondent submitted that treatment, medication and support would be available to the appellant in Kabul.
20. Mr Melvin did submit that the claims of seizures made by the witnesses were not borne out by the medical records and the appellant did not tell the GP until the week before the hearing. In his oral submissions Mr Melvin relied on **EU (Afghanistan) [2013] EWCA Civ 202**, paragraph 10, where Sir Stanley Burnton had indicated the motivation for incurring cost was that a child could have a better life in another

country and therefore the family would be unlikely to be happy to cooperate for the child to return as that would be a waste of an investment. He also made reference to **AA (Afghanistan) EWCA Civ 1625** at paragraph 11. Even if the Red Cross had visited the village it was unlikely that the family, who according to the appellant's own evidence spent \$5,000 to \$6,000, would assist. The submissions on the Red Cross letter did not outweigh the findings at paragraphs 21 and 22 of Judge Sullivan's decision.

21. In relation to his medication and epilepsy the consultant neurologist had advised the appellant to create a seizure diary and that did not appear. There was only one noted seizure in April 2017 and nothing since that time. If the appellant had had seizures in 2020, he would have contacted the GP and restarted his medication. There were large time gaps between these incidents, and nothing put before Judge Sullivan in 2019 and it had only recently come to light. The Pathway Plan in the health section made no mention of any difficulties with the appellant's epileptic seizures.
22. Mr Smyth submitted that there had been further evidence from the Red Cross as per the letter of 1st August 2019 and an appointment had been made for the appellant to attend. This post-dated the hearing before Judge Sullivan.
23. The appellant could not obtain a taskera because it was clear from the country guidance that he had to obtain it from his home area. This was someone who was destined to work in the informal economy and could not rely on regular financial assistance. The question was what would happen to him when his return package had evaporated because he had no personal connections in Kabul and had lost contact with his family.
24. The current country guidance of **AS (Safety of Kabul) Afghanistan [2020]** went into far more detail about the types of work available and set out explicitly the limits on employment and the fact that owing to his circumstances the formal economy would be forever beyond him. The country guidance made clear that there was employment in the construction industry but here his epilepsy was highly relevant. The appellant had not fabricated this, there had been a formal diagnosis of epilepsy. Dr Hartley had made the point that his epilepsy coincided with anxiety and his thoughts on his parents. He had struggled to get appointments in the face of the COVID pandemic and managed to obtain one at the end of January 2021 and his GP had prescribed him further medication albeit by telephone.
25. I was invited to consider all of the evidence in the round and referred to Mr Smyth's skeleton argument that this was a young man with a formal diagnosis of epilepsy with seizures controlled by medication. There was no embellishment on the part of the appellant. The cost of medication was that one day's labour would be equivalent to ten days' medication. It was clear from the evidence that work as a day labourer was irregular and the indication was that it was common for people to only obtain a handful of days per month.

26. The COVID-19 pandemic was relevant to the reasonableness of his return because at the date of the hearing the world was affected by a world pandemic and the employment opportunities, his lack of connection in Kabul would force him to be accommodated in a tea house, which had notoriously poor sanitation and were crowded. This was an appellant who had never been to Kabul.
27. I was invited to allow the appeal.

Analysis

28. The appellant adduced further evidence from the Red Cross and further medical evidence under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008. Much of that evidence post-dated the First-tier Tribunal and it was admitted in the interests of justice.
29. First-tier Tribunal Judge Sullivan stated at paragraph 17 that in assessing the appellant's evidence, "I have kept in mind his youth and the fact he would have been a child at the dates of key events". She noted that:

"19. In the light of the evidence filed and given in this appeal and the concessions made by the two representatives at the hearing I find as follows:

- a) The Appellant is now 19 years of age;*
- b) He comes from Shahabuddin village in the Puli Khumri district of Baghlan province;*
- c) His father was a member of the Ahmadzai Shora which is the Ahmadzai tribal gathering which by tradition resolves issues between councils and villages; and*
- d) The Taliban is in control in Baghlan province so that it is not safe for the Appellant to return."*

Judge Sullivan at paragraphs 20 to 22 made a series of findings that she was not satisfied that the Taliban had attempted to recruit the appellant when he was living at home in Shahabuddin and that she was not satisfied that the appellant had given a truthful account of his history in Afghanistan or of his journey to the United Kingdom.

30. For reasons which will become clear, not least the appellant's health condition, I highlight the principles enunciated and encapsulated in **AM (Afghanistan) v SSHD** [2017] EWCA Civ 1123 with regards vulnerable witnesses. Paragraph 21 of that authority gave what was described as an inexhaustive checklist

“21. It is submitted on behalf of the appellant that the agreed basis for allowing the appeal on the merits reflects core principles of asylum law and practice which have particular importance in claims from children and other vulnerable persons namely:

a. ..given the gravity of the consequences of a decision on asylum and the accepted inherent difficulties in establishing the facts of the claim as well as future risks, there is a lower standard of proof, expressed as 'a reasonable chance', 'substantial grounds for thinking' or 'a serious possibility';

b. ..while an assessment of personal credibility may be a critical aspect of some claims, particularly in the absence of independent supporting evidence, it is not an end in itself or a substitute for the application of the criteria for refugee status which must be holistically assessed;

c. ..the findings of medical experts must be treated as part of the holistic assessment: they are not to be treated as an 'add-on' and rejected as a result of an adverse credibility assessment or finding made prior to and without regard to the medical evidence;

d... expert medical evidence can be critical in providing explanation for difficulties in giving a coherent and consistent account of past events and for identifying any relevant safeguards required to meet vulnerabilities that can lead to disadvantage in the determination process, for example, in the ability to give oral testimony and under what conditions (see the Guidance Note below and JL (medical reports – credibility) (China) [2013] UKUT 00145 (IAC), at [26] to [27]);

e. ..an appellant's account of his or her fears and the assessment of an appellant's credibility must also be judged in the context of the known objective circumstances and practices of the state in question and a failure to do so can constitute an error of law; and

f. ..in making asylum decisions, the highest standards of procedural fairness are required.

31. I remind myself of the principles set out in **Devaseelan**. In **AA (Somalia) v SSHD** [2007] EWCA Civ 1040 at paragraph 53, Carnwath LJ (as he then was) extracted some key tenets as follows:

‘In Devaseelan itself it was the Secretary of State who was seeking to rely on the previous decision. ...I extract what seem to me the most relevant points for present purposes (including the AIT's emphasis):

*(1) The first Adjudicator's determination should always be the starting-point.
....*

(4) Facts personal to the Appellant that were not brought to the attention of the first Adjudicator, although they were relevant to the issues before him, should be treated by the second Adjudicator with the greatest circumspection. ...

(6) If before the second Adjudicator the Appellant relies on facts that are not materially different from those put to the first Adjudicator, and proposes to support the claim by what is in essence the same evidence as that available to the Appellant at that time, the second Adjudicator should regard the issues as settled by the first Adjudicator's determination and make his findings in line with that determination rather than allowing the matter to be relitigated...

(7) The force of the reasoning underlying guidelines (4) and (6) is greatly reduced if there is some very good reason why the Appellant's failure to adduce relevant evidence before the first Adjudicator should not be, as it were, held against him... "

32. The appellant asserted he arrived in the UK on 24th June 2016. In his asylum intake interview the appellant stated that he had no health difficulties, but I note in his witness statement of 28th November 2016 at paragraph 13 he stated that the Taliban had visited his house and when he refused to join them, they kicked him and beat him with the backside of the rifle and, *"as a result I got head injury on my left side of the skull. I still have a visible wound mark of that injury. I went to the local clinic named Haji Nawab Clinic where I had eight stitches at my head injury"*.

33. His Statement of Evidence (SEF) clearly identified as having a witness statement dated November 2016 attached, wherein he refers to the nature of his injuries to his head. That predates the very first appeal decision, which in fact was set aside by Upper Tribunal Judge Jordan on 26th March 2018. On 27th September 2017 the appellant is recorded by his GP practice as,

"seen with support worker present Big World used describes ? seizures as starting whilst home in Afghanistan three years ago first episode – was sitting with family and then had ? seizure, did not know what happened but says mum described incident as him being possessed, fell on floor and became unconscious and mum got him back by pouring water on face – all four limbs were shaking ... had generalised pains in body afterwards with confusion – unsure how long ? seizure lasted has had similar episodes two – three times since most recent was April 2017 was sitting at friend's home, had ? seizure – friend said fell unconscious did not tell him full details of episode as ? did not want him to feel bad ... unable to speak as was took weak, no identifiable provoking factors ... informed by support worker the patient had head injuries in past (sic)."

34. The doctor's notes record that the appellant described to the doctor that the Taliban entered his home and hit him on the head with a gun and described profuse bleeding, admission to a hospital, and seizures started afterwards. The doctor identified no family history of seizures and that he "feels well in self otherwise".

35. I note this description in September 2017 was very similar to the description given in his 2016 witness statement which predated any decision either from the Secretary of State or the judiciary. The appellant apparently had no warning signs of his impending attacks. As recorded in a letter from the Looked After Children's nurse Linda Robinson on 29th June 2017:

"F has experienced a 'blackout' episode. This occurred in April 2017. He says he did not have any warning. He is unclear how long this lasted and he had to be roused by his friends who splashed him with water. He says he had not taken alcohol or any other drug on this occasion. His initial health assessment dated 2nd July 2016 also records an episode of a seizure and it had asked for this to be investigated by his GP by August 2016 and this does not appear to have occurred."

36. The nurse proceeded to state that he had some sleep difficulties and headaches which he managed using paracetamol but otherwise was in good health. She also acknowledged that he *"presented as a polite young man. He had some worries and anxieties that his social worker is supporting him with and this appears to be specifically related to his asylum claim"*.
37. The significance of this letter is that it is quite clear that the appellant had requested that he be investigated by his GP as long ago as July 2016 and this did not occur.
38. There is a further record from Coram Adoption and Fostering Academy dated 28th June 2017 and the entry reads:

"Social worker to encourage F to make an appointment to discuss 'blackout' episode, headaches and sleep difficulties".

39. In fact, the appellant was first registered with the Guildhall Surgery on 24th June 2016 and has only ever been registered with the Guildhall Surgery since that time. His new patient questionnaire identifies under "under serious illnesses" possible 'seizures'. A year later in September 2017 he was referred to the Children and Young People's Mental Health Services for what he described in the meeting as "seizure-like episodes" and that the appellant called them "genies". The health care practitioner there reported 'From F's reports of his friend's account of what the episodes look like they are in line with definition of seizures. F is unable to stop or recall anything about them.'" She stated:

"Due to F's undiagnosed seizures our service was unable to properly assess his mental health needs, in our view further medical investigation into the seizures is required. F also reported that he suffered a trauma to the head during the time Taliban hit him repeatedly with a metal object"

and:

"With regards to risk my assessment highlighted the safety risk to this YP especially due to seizure episodes. So far the seizures have been witnessed by his friends and no-one sought medical attention during or after the event. My concern is that FA lives in an independent accommodation with no adult supervision, who would be able to call an ambulance when a seizure occurs. In addition there are no obvious triggers to the seizures that FA was able to identify. He is not able to control his body during seizures which pose a risk of choking and death."

That letter was dated 15th November 2017.

40. He was referred to the Urgent Care and Long-Term Condition Neurology Department of the William Harvey Hospital in Ashford and seen by a locum consultant neurologist, Dr Valavarius, who wrote on 3rd April 2018 that the appellant had attended the clinic alone (there did not appear to be an interpreter) and "he reports head injury probably a shotgun whilst he was in Afghanistan". The doctor took information confirming that he did not hold a driving licence. It would seem, however, that the doctor considered that he had a metal fragment in his head and sent him for a CT scan and he was to have an MRI brain scan and an EEG. He was placed under the care of the epilepsy specialist nurses and prescribed with medication.
41. On 22nd May 2018 it was reported that the MRI scan did not reveal any significant epileptic focus, but the EEG revealed some "sharp waves which are not particularly prominent at the side of your reported injury".
42. The consultant neurologist Dr Sabeka confirmed on 4th February 2019 that again the appellant attended the clinic alone for review and that he had been seen on a few occasions and was diagnosed with symptomatic epilepsy. This letter stated:

"He was unable to describe the circumstances of the cause of the scar over the left temporal area. The gunshot injury was in Afghanistan, in August 2017 he got three consecutive seizures. On that day he was discharged from neurology and his medication was not continued."

43. On 4th November 2020 Dr M R Patel of the Guildhall Surgery wrote:

"He was diagnosed with generalised tonic clonic seizures probably posttraumatic symptomatic epilepsy. He was started on levetiracetam medication to achieve absolute control of the seizures and he was referred to the epilepsy specialist nurse to take over his care."

He added, "Mr A requires levetiracetam to keep his seizures under control" and added:

"As it does not appear that he has been followed up by the mental health team I am not sure what specific mental health issues he has apart from feeling 'sad, isolated and alone' at times and wondering if his family are alive or dead as the Red Cross have been unable to locate them."

44. I make various comments about the documentation, not least that this epilepsy appears to have been associated with an attack in Afghanistan and prior to his departure. There does not appear to have been an interpreter present during many of his medical appointments and I think it credible that the appellant was, as it says, unable to describe the circumstances properly but he also has a scar in line with the injury as he claims which is that he was hit on the head with a rifle. I accept he was experiencing epileptic seizures and had a serious medical condition prior to his asylum claim and a condition which was not (understandably) factored into the

decision of First-tier Tribunal Judge Sullivan when considering the circumstances of the appellant on return to Kabul.

45. Dr Sarah Hartley, clinical psychologist, in her report of 7th September 2020 confirmed that the appellant did not worry about his mental health, but his specific concern was clearly his epilepsy (section 2.4.1). She also recorded at 2.4.7: "He tries to keep busy so that he does not think about things that make him sad and the last time he had an attack was in July 2020." Interestingly, with a suggestion of his own denial she also stated: "He does not believe that he has been diagnosed with epilepsy." She identified that he was not taking his medication anymore because it had run out, but the attacks were still happening.
46. To her, he denied symptoms of psychosis, suicidal ideation and that although at the time he felt depressed, but this was owing to his asylum application.
47. She stated that she did not think he was suffering from a diagnosable mental health condition although he was a "*vulnerable young man who struggles with some psychological symptoms*". The appellant did not exaggerate his claim and "denied many symptoms of PTSD during the interview" but in the "psychometric questionnaire he scored within the significant range for defensive avoidance" (3.1.3). He did not meet the full criteria of PTSD but he apparently did have some of the symptoms and had anxiety about his family. She recommended that he may benefit from psychological treatment for his trauma-related symptoms and she observed critically at paragraph 3.5.1 that:

"Mr A would not be prevented from working by a mental health condition, but the ongoing seizures that he reports would prevent him from being able to work safely, particularly in a role which required heavy lifting or the use of heavy machinery."
48. I accept the report of Dr Hartley. She has been a clinical psychologist in the NHS for eleven years and a member of the British Psychological Society with a raft of appropriate qualifications and is registered with the Health and Care Professions Council. She has a panoply of publications and has undertaken various presentations. I found her report in this particular instance balanced.
49. I therefore give weight to her report and I consider that the medical evidence suggests that the appellant has been consistent about his medical condition, did not manufacture the condition for the purposes of the appeal hearings because the scan clearly shows some evidence of abnormality and he has a scar, verified by medical professionals, on his left temporal side which is consistent with his assertion of being attacked. He has been diagnosed with epilepsy.
50. The appellant's friends' statements were not signed but one did attend to give evidence albeit he was not, in the event, called. Moreover, there is reference in the letter cited above from the primary mental health worker Ania Lero on 15th November 2017 that his seizures had indeed been witnessed by his friend. I find that the seizures occurred prior to his departure from Afghanistan and have continued

subsequent to his asylum claim to date. I consider that his friends' statements are not an embellishment and merely reflect the existing day to day position. In the light of the Covid pandemic use of the NHS has been actively discouraged including attendance at surgeries and hospitals and the lack of appointments in relation to the appellant's epilepsy is not surprising.

51. I consider that the principles set out in AM (Afghanistan) and the Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance, apply because of the appellant's epilepsy.
52. I realise as per Devaseelan that there have been findings made in respect of the appellant's credibility by Judge Sullivan. She applied the Presidential guidelines on vulnerability but was not aware of the appellant's condition of epilepsy when the decision was made and which included adverse credibility findings in relation to the appellant's account of his time in Afghanistan and his journey. However, the additional evidence now submitted, shows that the appellant prefers to deny his medical condition and this evidence was not taken into account when there was an assessment of the discrepancies between his written and oral evidence. That said it was the findings made by the First-tier Tribunal in relation to relocation to Kabul, were set aside and in relation to risk on return, I confine myself to considering the circumstances pertaining to relocation but that must include consideration of the new evidence and include consideration of the appellant's attempts to trace his family in Afghanistan which in turn are relevant to his ability to support himself in Kabul.
53. First-tier Tribunal Judge Sullivan was not satisfied that attempts to trace the appellant's family in Afghanistan had failed or the appellant did not have means to contact them. At 22(b) of her decision the judge did not accept in relation to the lack of contact with the family that his evidence was "*persuasive*" and at 22(c), "according to his evidence his mother, four brothers and three sisters were all living in Shahabuddin when he left Afghanistan; there is no evidence to suggest that they have moved home."
54. The judge also found that he did not give the Red Cross tracing service any contact details for his parents and that he had two maternal uncles in Afghanistan who were married with children who lived half an hour by foot from his own home but there was nothing in the correspondence from the Red Cross or in the letter of 7th June 2018 from the Red Cross to show that he had disclosed the existence of these relatives.
55. The judge criticised the appellant for failing to give further information from the Red Cross, bearing in mind that the last letter was the June 2018 letter and there was no indication of the outcome of any enquiries.
56. Nonetheless the Judge Sullivan in her decision promulgated on 9th May 2019, at paragraph 23 stated this:

"23. The Respondent has accepted that the Appellant cannot safely return to his home area. In considering whether it is reasonable for him to move to Kabul and what

risks (if any) he would face there I do so on the basis of the following circumstances.

24. *The Appellant relies in particular on the UNHCR guidelines dated 30 August 2018, particularly at pages 148 – 149 of the Appellant’s bundle. The UNHCR guidelines post-date the country guidance cases. The Appellant’s father’s role as a village elder who was a member of the Ahmadzai Shora with the tradition of settling disputes between villages/councils brought him within the category of ‘tribal elders’ identified at paragraph (h) on page 149 of the Appellant’s bundle. I am not satisfied that he would otherwise have been, or been regarded as, a government official, civil servant or perceived supporter of the government. I am satisfied that the Appellant was thus a member of the family of a tribal elder. However the Appellant’s father is reported to have resigned his role in or about late 2015. I am not satisfied that he is now a tribal elder or that the Appellant is a now a member of the family of a tribal elder. I find that the Appellant does not currently fall within the risk category summarised at pages 148 – 149 of the Appellant’s bundle or that he would be remembered or recognised as having been in that category more than 3 years ago. It has not been suggested that he falls within any other risk category identified by the UNHCR in these guidelines.”*

57. There has now been further information from the Red Cross, and I make these observations particularly in the light of the new medical evidence which has been provided for the resumed hearing and its implications for the previous findings. Judge Sullivan stated that the appellant changed his evidence on losing contact with his family between his Statement of Evidence Form (SEF) at B4 – 10 and to the appellant, “I have lost their contact number” and at B4.11, “I don’t have their contact phone number”, and, when under cross examination. I remind myself that there was a space of some three years between the November 2016 SEF statement given when the appellant was a minor and evidence given three years later in 2019 under cross examination, when the appellant had to be “reminded of what he had said earlier”, and I conclude in the light of the medical evidence, there was no appreciation that the appellant had sustained head injuries or rather had epilepsy.
58. Throughout the reports the appellant has displayed his sadness at losing contact with his family. I have admitted the witness statement of the appellant dated 27th January 2021 whereby he confirmed that on 6th August 2019 he met with two people from the Red Cross, an interpreter and his social worker. He was told that the Red Cross had visited his village and asked the village elder and his neighbours about his family, but the neighbours told the Red Cross that the Taliban had come and attacked people in the village. There was some fighting and after that fighting his family disappeared. That had occurred four years earlier and nobody knew where they went. Although the Red Cross stated they could not put this in writing, there was also, a reference by the solicitors for the appellant to the Pathway Plan in which it recorded that Ms O’Brien accompanied the appellant to a meeting with the Red Cross at which meeting it was confirmed that his family left the village four years ago.

59. By way of confirmation of the appellant's attendance at the offices of the Red Cross, the Pathway Plan dated 2020 from Kent County Council stated, "*F attended a meeting with the Red Cross last year who reported that they had been to his village and found his old house but was told by an elder that the parents had left four years ago, there was no further update*". Indeed, there was a letter from the British Red Cross dated 1st August 2019 which showed that an appointment had indeed been made for him. That letter made clear the Red Cross had "no wish to become involved in any capacity in legal or other official proceedings". Thus the lack of any further written evidence in relation to the tracing enquiries from the Red Cross is understandable.
60. In view of the further evidence, I revisit the finding of First-tier Tribunal Judge Sullivan in relation to the appellant's contact with his family. Albeit I note that she identifies discrepancies between his evidence at paragraph 22(a) and 22(b), she stated at 22(d): "He did not give the Red Cross tracing service any contact details for his parents." In fact, in a letter of 7th June 2018 (Judge Sullivan heard the case on 16th April 2019) the Red Cross specifically state: "We refer to your recent tracing enquiry concerning your father M.. A., mother K.. A. and seven siblings." It is clear that the appellant had given the details and the village of the appellant's parents. The appellant clearly did give contact details for his parents as indeed the judge herself noted from the last letter from the Red Cross at 22 (e) of her determination.
61. I also note that the Pathway Plan added that 'F added his details to the family tracing list in case his family are looking for him'. I consider that the appellant has made efforts to secure knowledge of the whereabouts of his family and the explorations by the Red Cross in the relevant area of Afghanistan and on enquiries would have likely led to extended family members. I do not think the appellant can continue to be criticised for failing to give details of members of his extended family particularly after this length of time. It was accepted by Mr Melvin that the home area of the appellant was not safe for him to return and that the Taliban had an active presence in that area. Indeed, the reasons for refusal conceded that the appellant's father worked as an Ahmadzai Shora and that his account was internally consistent (paragraph 17 of the reasons for refusal letter). That the appellant's father was a member of the Ahmadzai Shora and indeed that was a matter that was accepted by the respondent in the refusal letter and First-tier Tribunal Judge Sullivan.
62. The UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan dated 30th August 2018 outline in the summary at page 48 under (l) that:

"UNHCR considers that, depending on the individual circumstances of the case, persons associated with, or perceived as supportive of, the government or the international community, including the international military forces, may be in need of international refugee protection on the basis of a well-founded fear of persecution at the hands of non-state actors for reasons of their (imputed) political opinion or other relevant Convention grounds, combined with a general inability of the state to provide protection from such persecution. Such persons include:

...

(h) *tribal elders and religious leaders;*

..."

63. UNHCR Guidelines are not determinative but they should be taken into account and given weight. What has been established is that the home area is not safe, and the family is associated with an Ahmadzai Shora, indeed, their name is Ahmadzai as given by the appellant. The fact is that the appellant and family have been associated with the father as an Ahmadzai Shora (tribal elder) even if he resigned in 2015 as found by Judge Sullivan, continues as a fact, and I am not persuaded that the family association would have changed. The appellant last had contact with his family now nearly five years ago in 2015, when he left Afghanistan, and there have been attempts by him to trace his family through the Red Cross. It would be unsurprising if his family had departed owing to their links with a member that was associated with the government and at risk from the Taliban especially if the Taliban are in control in the area; it is accepted that the area is subject to Taliban insurgency.
64. I therefore find it likely that the family including any extended linked family may well have departed and I accept the appellant's claim that he has not been able to make contact with his family or his extended family in order to secure support, even financially, in Kabul. There was criticism of the appellant for failing to contact his extended family but there was no indication that their circumstances were such that they too would not have left or indeed would be able or now willing to afford him support.
65. Turning to relocation, Lord Bingham held in **Januzi [2006] UKHL 5** at paragraph 21
- 'The decision-maker, taking account of all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so'.*
66. **AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC)** was appealed to the Court of Appeal on the point of the numbers at risk on return to Kabul owing to indiscriminate violence and was remitted to the Upper Tribunal, which, having undertaken a consideration of further evidence submitted, produced further country guidance in **AS (Safety of Kabul) Afghanistan CG [2020]**. This considered the reasonableness of return and relocation to Kabul.
67. **AS (Safety of Kabul) 2020** acknowledged the widespread and persistent conflict-related violence in Kabul but stated that the proportion of the population affected by indiscriminate violence was small and not at a level where a returnee, even one with no family or other network and who had no experience of living in Kabul, would face a serious and individual threat to their life or person by reason of indiscriminate violence. In particular, it found that although there were difficulties faced by the population living in Kabul it would not in general be unduly harsh for a single adult male in good health to relocate to Kabul even if he did not have any specific

connection or support network. Nonetheless the particular circumstances of the individual must be taken into account. The headnote at (iv) emphasised

'However, the particular circumstances of an individual applicant must be taken into account in the context of conditions in the place of relocation, including a person's age, nature and quality of support network/connections with Kabul/Afghanistan, their physical and mental health, and their language, education and vocational skills when determining whether a person falls within the general position set out above. Given the limited options for employment, capability to undertake manual work may be relevant'.

68. **AS (Safety of Kabul) Afghanistan CG** [2020] remarked upon the socio-economic conditions and in relation to conditions to be experienced with regard work a critical factor to avoid destitution and goes to reasonableness of relocation, as follows:

'229...Even a person who is unable to form any such connections, and who must survive without the benefit of a network, will ordinarily be able to find inexpensive accommodation in a "chai khana" and (depending on physical abilities, health and other individual characteristics) be able work as a day labourer in the informal labour market in Kabul.

230. A returnee with a support network or specific connections in Kabul may be in a significantly stronger position than others and in some cases the availability of a network will counter a particular vulnerability of an individual on return".

69. That said, secure rather than temporary employment was said to be dependant upon connection and at paragraph 236

'Whether a particular returnee would be able to earn sufficient income from this type of work [manual day labourer work] will depend on the individual circumstances. As the available work would mostly be manual in nature, it is necessary to consider whether an individual would be capable (e.g. in the light of his age, health, physical capabilities and other factors) of undertaking such work and would be able to present himself in a way that would attract employers, who frequently will be selecting individuals from a pool of men (some bringing their own tools) who congregate at known meeting points'.

70. As can be seen from **AS**, the unemployment situation in Afghanistan and particularly in Kabul, where the appellant has never lived and has no taskera, would be highly competitive and that is for somebody of good health. The CPIN on Afghanistan produced by the respondent cited unemployment at 23.9%. The

appellant may access the general labour market but he does not have a taskera and would be unable to obtain a taskera because he cannot return to his home area. That, as per the country guidance, does not mean that he cannot work but he would be forced into manual labour positions in a highly competitive employment environment which will have been exacerbated by the pandemic conditions. The appellant is clearly somebody who is at risk of seizures owing to his epilepsy. There was some indication that epilepsy treatment is available, but the pharmacy appeared to consider that this would have to be purchased and I am not persuaded that the appellant, even if he could obtain employment, would be able to find work, find appropriate accommodation and fund his medication. The work that would be available to him would be erratic and irregular and this would place him at a severe risk of being unable to purchase his medication. It would also appear that at present he is unable to drive. Employment in Kabul is described in **AS (Safety of Kabul) Afghanistan CG** [2020] as precarious and without guarantee of regular work.

71. He has limited skills, has effectively been a student and although he can speak the language and is clearly a personable character, I find his employment opportunities to support himself on relocation to Kabul would be severely diminished even in the constrained job market.
72. This is an appellant who came to the UK, at the age of sixteen but left Afghanistan at the age of 15 years, and who has spent his time in the UK in education and has not worked. Dr Hartley's evidence included an observation that the onset of his epileptic fits could be affected by anxiety and stress. Dr Hartley also described him, as recently as 2020, as *'vulnerable young man who struggles with some psychological symptoms'*
73. I find that he is at the risk of further epileptic tonic clonic (serious) seizures, the onset of which can be without warning and which need to be controlled. Although the regularity of those seizures was questioned by the respondent, the seizures do occur and appear to have occurred in the latter half of his teens and it is the unpredictability of those seizures is of further real concern. The combination of his youth, reduced employment opportunities and lack of family support will contribute to ongoing insecure funding for vital medication.
74. In sum, I find the appellant would not have access to any form of support on return to Kabul, has a very serious medical condition from which he can experience tonic clonic seizures with no warning. He cannot drive and, as Dr Hartley an experienced medical professional with the NHS has pointed out, he would be unable to obtain manual work using machinery, which would place him at an even greater disadvantage in the labour market.
75. In all the circumstances, I consider that for this particular appellant it would be unduly harsh to relocate to Kabul, somewhere he has never lived, and I therefore allow the appeal on asylum grounds and human rights grounds.

Notice of Decision

The appeal is allowed on asylum and human rights grounds (Article 3).

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.

Signed *Helen Rimmington*

Date 4th February 2021

Upper Tribunal Judge Rimmington

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed *Helen Rimmington*

Date 4th February 2021

Upper Tribunal Judge Rimmington