



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02780/2019

THE IMMIGRATION ACTS

Heard at Field House
On 1 December 2020

Decision & Reasons Promulgated
On 6 April 2021

Before

UPPER TRIBUNAL JUDGE McWILLIAM
DEPUTY UPPER TRIBUNAL JUDGE JOLLIFFE

Between

H A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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

Representation:

For the Appellant: Mr D Bazini, instructed by AA Immigration Lawyers
For the Respondent: Ms A Everett, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Afghanistan. His date of birth is 2 November 1989. He was anonymised by the First-tier Tribunal. There is no reason for us to interfere with this.
2. The Appellant's appeal was dismissed by First-tier Tribunal Judge Greasley following a hearing on 17 May 2019. The Appellant was granted permission to appeal. Upper Tribunal Judge Pickup set aside the decision of the First-tier Tribunal. The matter was listed before us for a face-to-face re-hearing.
3. The Appellant made an application on protection grounds on 8 March 2019. In a nutshell, his case is that his father was a commander for the Hezb-e-Islami, and the Appellant's brother was his father's bodyguard. On 20 April 2007, his father and brother were killed by members of the Jamiat Political Party in Afghanistan. They were killed by the Mohseni family¹. Mustafa Mohseni, Saftar Mohseni, Mohamad Azam and Rusol Khan Mohseni. Those responsible for the murders are influential within the government in Afghanistan. Following the Appellant's father and brother's funeral the Appellant was advised to flee because those responsible for the death of his father and brother would kill him.
4. The Appellant arrived in the UK on 7 May 2008. On 7 May 2008 he was served with a RED 0004. He was encountered on 2 February 2017 whilst working illegally here. On the same day he made a claim for asylum.
5. The First-tier Tribunal dismissed the Appellant's appeal. Judge Greasley heard oral evidence from the Appellant and his uncle, "ZS". Both had made witness statements dated 23 April 2019. There was a report before the judge from Dr Giustozzi.
6. The judge found the Appellant credible. There were before the judge death certificates pertaining to the Appellant's father and brother and their respective Hezb-e-Islami membership cards. There was evidence from Dr Giustozzi concerning the authenticity of the documents. In addition, the Appellant relied on biographical details in relation to the named assailants of the Mohseni Family. The judge said at paragraph 48:
 - "48. I accept, to the lower standard of proof, that there is, when assessed in the round, credible evidence that the appellant's brother and father were members of the Hezbe Islami in their capacity as a commander and bodyguard respectively. I also accept that the death certificates provided are noted to be genuine by Dr Giustozzi, as indeed are the respective membership cards. I draw no adverse inference by virtue of the fact that the death certificates do not specifically indicate who was responsible for causing death by gunshots, but rather focus upon medical aspects of the deaths.
 49. I accept that Dr Giustozzi has used a regular contact in Afghanistan, upon whom he has placed reliance, when assessing the genuineness of both the death certificates and the membership cards. I find that the fact that the points of contact and the researcher respectively did not separately provide

¹ There are several different spellings of the family name in the papers before us including Moshani, Mohsini and Mohseni. We use the spelling in the text copied or adopt the spelling used by Dr Giustozzi., "Mohseni"

their credential does not undermine Dr Giustozzi's opinions and observations.

50. I also accept that it is likely the appellant's father and brother were in fact killed by the Mohsinis. This allegation was made by members of the appellant's village in a letter provided to the Tribunal, and appearing at page 30 of the appellant's bundle. It was not suggested at the appeal hearing, nor indeed in the refusal decision, that this correspondence was not genuine. Nor equally was anything of the same kind said in relation to production of the Taskiri family details appearing at page 11. The judge went on to find that the appellant could reasonably internally relocate."

7. The judge said at paragraph 57 that he accepted the biographies of the Mohseni individuals and that they:

"Point to affiliations and associations with Jamiat Islami and indeed with the authorities. I accept that the evidence demonstrates that they have been involved in drug trafficking, land grabs and killings in Afghanistan. However, there is no evidence before the Tribunal that these individuals have sought to target the appellant who has never had any political connections or affiliations with any opposition group to that of Jamiat Islami. It is over ten years since the appellant left Afghanistan. Nor has the appellant demonstrated, at any stage, any inclination or motive to seek revenge against such individuals following the death of his father and brother",

The judge then went on to apply AS (Safety in Kabul) Afghanistan CG [2018] UKUT 00118 and concluded that relocation was reasonable for, amongst other reasons, the fact that the Appellant is young, educated, and resourceful.

The error of law decision

8. Judge Pickup found that the judge materially erred and set aside the decision. The error of law decision reads as follows:-

4. It is quite clear that the judge, having considered the evidence in its totality, made findings of fact largely in the appellant's favour. The judge considered the expert reports from Dr Giustozzi and accepted, from paragraph 48 onwards, that the appellant's brother and father were members of Hezbe Islami and that the death certificates provided are genuine, as are membership cards. The judge largely accepted Dr Giustozzi's evidence and found that it was not undermined by the respondent's criticisms. At paragraph 50, the judge accepted that it was likely the appellant's father and brother were in fact killed by the Mohsini family. The allegation was made by members of the appellant's village in a letter provided to the Tribunal and it was never suggested that the correspondence was not genuine.

5. The further facts that are relevant are that the judge found, and it is not contested, that the appellant had never been directly threatened or specifically threatened by the assailants of his father and brother; he had never had any direct contact with them. However, what is said is the village elders informed him that they have threatened his life, and thus he fled. At paragraph 51 of the decision, the judge stated,

‘... What I must therefore go on to consider is whether, in light of these circumstances, the appellant is able to avail himself of a reasonable opportunity to internally relocate within Afghanistan. For reasons that follow, I find that he can.’

Challenge was made to the use of the phrase “reasonable opportunity to internally relocate”.

6. Mr Bazini points out that the correct test is whether it is reasonable to internally relocate, not whether there is a ‘reasonable opportunity’, as expressed. I agree that the phrase is open to interpretation as to whether the opportunity to relocate was reasonable, rather than whether it was reasonable to expect the appellant to internally relocate, in other words, whether it will be safe for him to be able to relocate within Afghanistan. However, I am not satisfied that on the facts of the case there was any material effect in respect of the mis-statement of the test.
7. Mr Bazini claims in essence that the decision is incomplete, that the findings are incomplete in that the judge did not go on to make specific findings as to whether the appellant was himself at risk from the Mohsini family or their associates. In a sense, it might be implied that the judge agreed that the Appellant was at risk in his home area because otherwise, why would the judge go on to consider the question of internal relocation? However, my attention has been drawn to what the judge stated in paragraphs 56 and 57, where the judge pointed out the appellant had never been specifically threatened by the assailants of his father and brother and has never had any direct contact with them and at 57 stated,

‘However, there is no evidence before the Tribunal that these individuals have sought to target the appellant, who has never had any political connections or affiliations with any opposition group to that of Jamiat Islami.’

The judge went on to point out that it had been over ten years since the appellant left Afghanistan and he had never suggested any inclination to seek revenge against those persons responsible for the death of his father and brother. The difficulty is that given that the judge accepted the profiles, the biographies, of the Mohsini family and that the evidence from those profiles demonstrated that they had been involved in drug trafficking, land grabs, and killing in Afghanistan. They are known warlords, or equivalent. The difficulty is that the judge never addressed the reach of these individuals to the intended place of safety, Kabul, and never answered the questions as to whether the appellant is actually at risk from them even though he had never been directly threatened. In essence, the judge stopped short of making a complete set of findings that would inform the question as to whether internal relocation was reasonable.

8. A further point is made that Dr Guistozi’s report raised the issue of blood feud. In addition to concluding that there was no risk to the appellant from the authorities but rather from the political opponents to the authorities, he also raised the concern that these notorious individuals, fearing that the appellant might in due course or in the future take revenge against them for the death of his father and brother, might act pre-emptively to attack him. None of that has been addressed in the decision and it is for these reasons that I find that the findings are incomplete.

9. I do not consider it is possible to read into paragraph 51 that the judge accepted that the appellant was at risk from those persons, the Mohsini family and others, because at paragraphs 56 and 57 the judge was relying on the absence of evidence of a direct link of threat to the appellant to suggest that he would not be at risk on relocation. For example, it is pointed out in paragraph 56 that he was able to attend the funeral without the knowledge of his father and brother's assailants as they lived in a location some distance away. The judge suggested at paragraph 56 that this was cogent evidence that he is someone who was able to avail himself of a 'reasonable opportunity' for internal relocation and the judge then rejected his claim that he would be traced anywhere and everywhere in Afghanistan.
 10. After considering the decision carefully, I accept the submissions of Mr Bazini that the incomplete findings undermine the conclusion that the appellant can relocate safely in Kabul, or elsewhere in Afghanistan. In respect of that, the judge noted that the appellant's uncle had visited Kabul and had been returned there despite having been granted refugee status. All of this is complicated by the fact that the Court of Appeal has remitted the decision in AS back to the Upper Tribunal as to the safety of Kabul. It appears that the Upper Tribunal miscalculated the risks and that is to be reviewed on that narrow issue some time later this year.
 11. In all the circumstances, I am troubled by the decision and find that the errors are material; it would be unsafe to allow it to stand. It may not be surprising that the judge was unaware that the Court of Appeal remitted AS (Afghanistan) back to the Upper Tribunal just some six days before the decision was promulgated on 30 May 2019. However the larger difficulty remains the incomplete findings as to the adverse interest of the Mohsini family and whether their reach extends as far as Kabul and whether they might act pre-emptively in fear of retaliation or revenge from the appellant. All that needs to be addressed.
 12. In the circumstances I find there is a material error of law, one that requires it to be set aside."
9. Judge Pickup in his decision made directions including the preservation of the positive findings from the First-tier Tribunal and therefore the outstanding issues are an assessment of the safety in Kabul and whether it is reasonable to expect the Appellant to relocate there given the threat and reach of the Mohsini family.
 10. There were further directions given by Upper Tribunal Judge Blum which were sent to the parties on 17 August 2020. Judge Blum said that the remaking of the decision would take place by a face to face hearing at Field House. He identified the three issues as follows:-
 - (i) whether the Mohsini family has an adverse interest in the appellant;
 - (ii) whether the Mohsini family's reach extends as far as Kabul; and
 - (iii) whether, in any event, it was reasonable for the appellant to internally relocate to Kabul.

The evidence

11. There was reference at paragraph 4 of Judge Blum's decision to further evidence from the Appellant. There was no further evidence on the court file. The Appellant's solicitors had purported to send the further evidence in an email of 28 July 2020 but had failed to attach the "supplementary bundle" as an attachment. The Appellant was relying on the bundle that was before the First-tier Tribunal. In addition there was an addendum report from Dr Guistozzi dated 30 June 2020, an article from the Telegraph of 13 October 2020, an article from a website <https://www.afghanaid.org.uk/news/the-new-threat-facing-afghanistan-coronavirus-co> of 24 November 2020, an article from UN News at <https://news.un.org/en/story/2020/06/1067162> an article from Al Jazeera entitled coronavirus pushing millions of Afghans into poverty, a supplementary bundle containing a letter from the head of the villagers and a translation, bank statements belonging to ZS and a copy of the Appellant's medical prescription for amitriptyline.
12. The Appellant did not give oral evidence before us. ZS gave oral evidence. Mr Bazini said that it was necessary for the court to be updated on the situation regarding relocation. We expressed disappointment that the solicitors had not taken a further witness statement from the uncle bearing in mind the passage of time. The Appellant's uncle's witness statement before the First-tier Tribunal corroborates the evidence of the Appellant in respect of the part of his account which has already been accepted by the First-tier Tribunal. He gave oral evidence before us that can be summarised as follows.
13. ZS Lives with his wife and two children. The Appellant visits him. The Appellant is unemployed. ZS gives the Appellant money and food. The Appellant is suffering from depression and stress. He does not sleep well. He takes medication. The Appellant's mother and sister live in Afghanistan as does ZS's brother (the Appellant's uncle). The Appellant's mother divides her time between Andorab and Kabul (where ZS's brother lives). The Appellant's sister resides in Andorab with her family.
14. The Appellant could not live in Andorab because there are enemies who are influential. He could not live with his uncle in Kabul. The Appellant's uncle there has his own family living with him. He is a retired pharmacist. He could support the Appellant for up to two weeks or a month at most; however, he would not want to invite risk and danger to his own family from the Mohseni family one of whom is now a member of the Afghan parliament.
15. It would be very easy for the Mohseni family to trace the Appellant to Kabul particularly in the light of his uncle's occupation as a pharmacist. He is well-known and easily recognisable in the community.
16. Kabul is negatively impacted by the coronavirus. There are no facilities there and not enough oxygen for those suffering from the disease. The Appellant's uncle in Afghanistan has just enough money to support himself and his own family. There is a lot of unemployment in Kabul as a result of the pandemic. ZS could possibly send

the Appellant money for food but he could not afford to support his accommodation, clothing or other expenses.

The Evidence of Dr Guistoizzi

17. Dr Guistoizzi has made a number of reports and certain aspects of his evidence have been accepted, which led to the lawful and sustainable findings made by Judge Greasley.
18. In relation to relocation Dr Guistoizzi deals with this in his report of 12 May 2019. Paragraphs 10, 13-15 of the report state as follows:-

“10. As a result of all the above, there is no risk anymore to [HA] from the authorities. However, the risk from political rivals of Hezbe Islami, like Jamiat-i Islami, persists. The killing of two close relatives means that the culprits would be worried that [HA] might take revenge against them. In Afghanistan it is a matter of honour for every male member of the offended party to take revenge whenever it is possible. There is no time limit to the validity of a feud, which can often last for generations. While [HA] has not previously made such an attempt, this would not alleviate the risk, particularly as his return from the UK as an older man could be seen as increasing his ability to take revenge. Sometimes, these feuds can turn into outright war, as happened in 2006 between the Bhattani and Marwat tribes with 80 killed. The Sipai-Alisherkhel feud was still going on in 2012, having caused up to 40 casualties already. Anthropologists Barfield and Coburn confirmed in separate interviews to Cori in 2014 that blood feuds are still common occurrences in Afghanistan.”

19. Dr Guistoizzi said as follows in his report of 12 May 2019:-

“13. If [HA] returned to Afghanistan and relocated to Kabul, he might make harder for those responsible of the death of his father to track him down (sic), but he would also have to face the fact that Afghanistan does not have any benefit system. The cost of living in cities like Kabul is way higher than in the villages, where an individual might be able to get by with 50 dollars/month. Without any family support or state assistance, and unable to even apply for relatively well-paid jobs, [HA] would be at risk of becoming homeless. Finding accommodation will be difficult and expensive. The current cost of accommodation in Kabul (September 2017) is for a bed in a dormitory with around ten people cost about 10 dollars-15 dollars per month. These dormitories are found in outlying areas such as Kote-Sangi, Karte-Se and Darulaman Road. In the centre of Kabul a bed in dormitory cost around 20 dollars-25 per month (sic) single rooms in west Kabul (like Kote-Sangi, Karte-Se and other areas of west Kabul) cost around 50 dollars/month. Single rooms in central Kabul cost around 80 dollars-100/month. A two bedroom flat in west Kabul cost around 150 dollars/month. A three bedroom flat in west Kabul cost around 250 dollars-300/month. A two bedroom flat in central Kabul cost around 200 dollars-250. A three bedroom flat in central Kabul cost around 350-400 dollars/month.

14. Concerning a livelihood on his own would be a major challenge for [HA]. He will have to cope with an environment which he is completely unfamiliar: The Afghan labour market is very competitive due to high unemployment. Recommendations and references are essential for being hired. He would have to deal with a shrinking job market and a deep economic and social crisis. Unskilled work as a daily labourer in the building industry is the most widely available option, but due to massive unemployment (35-56% depending on the estimates) most workers only get a few days of work each week; his chances of getting even this type of employment will depend on his physical strength. Daily labour rates in Kabul were about 200 AFS/day (4 dollars), but of course work is not always available. The pay rate for unskilled workers had risen by September 2015 to 300-400 AFS per day, according to my researcher Shoib Najafizada who asked in two of Kabul's main squares, were labourers line up waiting for somebody to hire them (sic). This is higher than previously reported, apparently because of the 20% devaluation suffered by the Afghan currency over the last eighteen months, and because of the increase in the cost of living (accommodation especially). EUPOL estimates that a man with a family needs 600 dollars to live in Kabul; a single man would need a proportion of that, probably 200 dollars at least. Other chances of employment are paid even less: as a baker earning 40 AFS a day, for example. The rising unemployment is reportedly driving many young men towards crime, with the level of criminal activity rising fast in Kabul. As of September 2017 the rates paid to daily labourers in Kabul were around 500-700 AFS (around 10 dollars-15 dollars), according to Najafizada. This is higher than previously reported, apparently because of the 20% devaluation suffered by the Afghan currency over the last eighteen months, and because of the increase in the cost of living (accommodation especially). EUPOL estimates that a man with a family needs 600 dollars to live in Kabul; a single man would need a proportion of that, probably 200 dollars at least other chances of employment are paid even less: as a baker earning 40 AFS a day, for example the rising unemployment is reportedly driving many young men towards crime, with the level of criminal activity rising fast in Kabul.
15. In conclusion, [HA's] account is plausible. He would primarily be at risk from the killers of his relatives. Their membership of Hezbe Islami was confirmed in the verification report, and their death in the verification death certificates. The rivalry between Jamiat and Hezbe Islami continues."
20. Dr Guistozzi has prepared an addendum report concerning the Mohseni family and the prospects of obtaining a job as a day labourer in Kabul. He says the following in relation to the Mohseni family:-
 - "3. The Mohseni family is well-known in Baghlan as one of the dominant families in the province. They hail from Andarab and first started rising to power when Ghulam Mostafa Mohseni became head of the security department of the 20th Infantry Division in the late 1980s. Ghulam

defected to the army opposition of Jamiat-i Islami in 1992 and was appointed responsible for Andarab District by Jamiat. During the 1990s he led the fight against the Taliban in Jamiat's ranks, under the command of Jamiat's Minister of Defence, Ahmad Shah Massud. When the Taliban Emirate fell in 2001, Ghulam was appointed commander of 20th Infantry Division in the Provisional Army of Afghanistan (2001-5). That made him for the first time one of the three key power brokers in Baghlan (the other ones being Amir Gul for the Pashtuns and Said Mansu Naderi for the Ismalis). In the first provisional elections, Ghulam's brother Ghulam Rasoul Mohseni, was elected to the provincial council and then chosen as head of the council, thanks to the support of Deputy President Marshal Fahim and of Jamiat-i Islami. However, Ghulam Rasoul Mohseni was killed in a suicide attack against his office in May 2013.

4. After Ghulam Rasoul was killed, the family protected its political interests by having two other brothers of Ghulam Mostafa run for office. Ghulam Safdar Mohseni ran for the provincial council and Mohammad Azim Mohseni for parliament in 2018. Both were elected. Again, Ghulam Safdar managed to get elected as president of the council and is currently still occupying this position.
5. Ghulam Mostafa has retired from active life and Mohammad Azim has taken the family leadership. As well as a well-connected MP he managed to get numerous state projects to Andarab: clinics, roads, electricity in schools. This has made him very influential in Andarab.
6. The younger Mohseni brother, Ghulam Azam, is influential in civil society but does not occupy any position.
7. The family is no longer so dominant in Baghlan as a whole, as the Pashtun areas and some Tajik areas have fallen under Taliban control, and Pashtun officials have been appointed in considerable numbers in the administration in recent years. They are still the dominant family in Andarab (which has not been divided in three districts). The only competition they suffer there is from the family of Khalil Andarabi, who used to be linked to the rival Hezb-e-Islami. Now even Khalil Andarabi is aligned behind Jamiat, but the two families still compete for power. In the 2018 parliamentary elections one of Khalil Andarabi's brothers (Dr. Modabir) was elected to parliament as well, enhancing the ability of the ability (sic) to compete with the Mohsenis. Khalil Andarabi himself has been appointed again as Provisional Chief of Police after a period at home, and leads now the police in Ghazni.
8. Hizb-i Islami of Gulbuddin Hekmatyar has some presence in Andarab, but is very weak. No other party or groups has a significant presence there. Hizb-i Islami is not in a position to protect [HA] in Andarab.

Concerning the Prospects of Employment as a Day Labourer

9. Typically day labourers in Kabul wait in one of the city's squares for someone to come and hire them for the day. Before the current COVID-19 crisis, the daily rate was AFS 500-600 (6.50-8.00 dollars). Once the current

crisis started, because of a collapse in job offers, the rates has fallen to AFS 300-400 (4-5 dollars).

10. Before the onset of the COVID-19 crisis, a day labourer would hope to be hired two days out of three, although this as an average in the actual rate of employment would fluctuate. That implies an average monthly earning (excluding period of illness) of AFS 8,800 (113 dollars).
11. At present, because of the crisis, a day labourer cannot hope to get hired more than one/two days out of four (at reduced rates). That implies an average monthly earning of AFS 3,150 (40 dollars).
12. It is impossible to survive in Kabul with 40 dollars/month, so day labourers commonly take loans from relatives, sell whatever valuables they might have, and cut their consumption to the lowest possible level, such as feeding on tea and bread. One interviewee reported that his children were beginning to suffer from malnutrition. Another interviewee mentioned the case of a friend, who committed suicide because he was not able to feed his family. Fortunately by the time the pandemic exploded in Kabul it was spring and heating was no longer necessary (in winter the temperature fall to -10 (sic)).
13. Getting hired is also becoming a matter of ferocious competition. Says one day labourer that *(there are thousands of daily workers who are looking for work, when someone come to hire some daily workers, hundreds of people rush to him to get hired)*.
14. The situation is similar in other jobs that are considered to be at the bottom of the social ladder. It is possible to become a taxi driver (unlicensed) with a modest investment of a few hundred dollars for an old, worn out car. Before the crisis an unlicensed taxi driver would turn over AFS 700-900 per day, while now the turnover has fallen to AFS 400-500/day (including costs to be detracted before profit), despite working longer hours (up to 14h per day).
15. I also confirm that I stand by the findings of my previous report and that [HA] will be at risk from the killers of his father in his home area and also in Kabul."

Submissions

21. Ms Everett relied on the decision letter. She made an important and significant concession that the Appellant is at risk on return to his home area. She accepted that, in the light of this and the findings of the judge, parts of the decision letter are obsolete.
22. She drew our attention to the evidence of Dr Guistozzi in his report of 12 May 2019 at paragraphs 10 and 13. She submitted that he does not address the issue of whether the Appellant would be at risk from the Mohseni family in Kabul. The evidence is not sufficient to discharge the burden of proof. It is not enough to establish that should the Appellant's presence accidentally be revealed it would put him at risk. Dr Guistozzi does not specifically engage with the issue.

23. The Appellant has a support network of significance in Kabul. Ms Everett said she could not go behind the evidence that the Appellant's uncle would not allow him to live with him; however, there is family support and, on that basis, it is reasonable for the Appellant to relocate. She accepted that the global pandemic compounds the existing problems but there is no evidence that the Appellant will catch coronavirus and as a result be very ill. The evidence is that his family in Afghanistan continue to be employed.
24. Mr Bazini made submissions. He stated that the starting point is what is said by Judge Pickup particularly at paragraphs 4 and 7 of his decision in respect of paragraph 57 of the decision of the First-tier Tribunal. He emphasised that this is not a case where the Appellant is at risk from the Taliban. The bibliographies in relation to the Mohseni family have been accepted by the Tribunal. They have been specifically named as those responsible for the death of the Appellant's father and brother. They are warlords and gangsters who have taken powerful positions. One brother is a member of parliament. The Appellant is at risk in his home area. If they have an interest in him there, they also have an interest in him in Kabul. The Appellant left Afghanistan when he was a minor and he will be returning as an adult. He will be the talk of the town. The family is well-known in the area and word will get out. Those he fears are warlords. They have power and influence and are well-known within Jamiat Islami. The risk is real. Dr Giustozzi was not aware that the Appellant's uncle was a retired pharmacist in Kabul which explains why he did not comment on this.
25. The bibliographies indicate that one of the brothers is a member of parliament. He referred us to the bibliographies at pages 29 to 32 of the Appellant's bundle. He referred us specifically to paragraphs 3, 4, 5 and 7 of Dr Giustozzi's report to support that the Appellant would not be safe in Kabul. He will be perceived as a political rival or as somebody who will avenge the death of his father and son. The appeal should be allowed on this basis.
26. Whilst the Appellant has a relative in Kabul the relative feels that he will bring danger to the family. It is speculative to say that his family would be able to support him financially. Mr Bazini referred us to paragraphs 2, 11, 213, 241, 242 and 246 of AS. The general situation is exacerbated by the global pandemic. Employment opportunities are less than they were when the Upper Tribunal decided AS. In addition the Appellant has mental health issues. Mr Bazini drew our attention to paragraphs 241, 242 and 246 of AS. There will be suspicion should he return to Kabul. Attention will be drawn to him. The Appellant has good reason to be concerned and that will have an impact on his mental health. Mr Bazini drew our attention to the background material. Our attention was drawn to pages 37 to 39 of the supplementary bundle where there is evidence that the Appellant is taking amitriptyline.

AS (Safety of Kabul) Afghanistan CG [2020] UKUT

27. In respect of the reasonableness of internal relocation to Afghanistan of an individual at risk in his home area the Upper Tribunal decided the following which forms part of the headnote:-

Reasonableness of internal relocation to Kabul

- (iii) *Having regard to the security and humanitarian situation in Kabul as well as the difficulties faced by the population living there (primarily the urban poor but also IDPs and other returnees, which are not dissimilar to the conditions faced throughout many other parts of Afghanistan) it will not, in general, be unreasonable or unduly harsh for a single adult male in good health to relocate to Kabul even if he does not have any specific connections or support network in Kabul and even if he does not have a Tazkera.*
- (iv) *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.*
- (v) *A person with a support network or specific connections in Kabul is likely to be in a more advantageous position on return, which may counter a particular vulnerability of an individual on return. A person without a network may be able to develop one following return. A person's familiarity with the cultural and societal norms of Afghanistan (which may be affected by the age at which he left the country and his length of absence) will be relevant to whether, and if so how quickly and successfully, he will be able to build a network.*

Previous Country Guidance

- (vi) *The country guidance in [AK \(Article 15\(c\)\) Afghanistan](#) CG [\[2012\] UKUT 163 \(IAC\)](#) in relation to Article 15(c) of the Qualification Directive remains unaffected by this decision.*
- (vii) *The country guidance in [AK \(Article 15\(c\)\) Afghanistan](#) CG [\[2012\] UKUT 163 \(IAC\)](#) in relation to the (un)reasonableness of internal relocation to Kabul (and other potential places of internal relocation) for certain categories of women remains unaffected by this decision.*
- (viii) *The country guidance in [AA \(unattended children\) Afghanistan](#) CG [\[2012\] UKUT 16 \(IAC\)](#) also remains unaffected by this decision.*

- 211. In accordance with the 2019 Court of Appeal decision, we have made new findings on the extent of the risk the appellant will face from security incidents and the relevance of this risk to the reasonableness of Kabul as an internal relocation alternative.
- 212. The other findings of the Panel in the 2018 UT decision were preserved by the Court of Appeal. We have considered whether developments since December 2017 (which is the date until which evidence was considered in the 2018 UT decision) justify our reaching a different finding. This consideration has involved a review of a very considerable number of reports, articles and other documents (including the UNHCR Documents) as well as the expert evidence, as summarised above.

Safety and Security

- 213. The evidence indicates that although Kabul and its inhabitants are affected by armed conflict, in particular as a result of violent attacks by Taliban and ISIS, the city and province are - and are likely to remain - under the control of the Afghan authorities. We therefore do not consider there to be a real

risk that Kabul will fall under the control of anti-government elements or become a site of active conflict.

241. The Panel in the 2018 UT decision noted that EASO had recorded very high levels of mental health problems in Afghanistan, creating significant needs, but that there was a lack of trained professionals and inadequate infrastructure. It was noted that there was only one dedicated mental health hospital in Kabul.
242. The evidence before us is consistent with the Panel's findings: the conflict has resulted in mental health problems for many inhabitants of Kabul, but there is a lack of facilities (and professionals) available to provide treatment. There is no new evidence on this issue to warrant a departure from the findings of the Panel.
246. UNHCR, in the 2019 COI UNHCR Report, cites extensively from a recent German study which found that returnees to Kabul from Germany have faced violence, suspicion and hostility. This study (which we have not seen) was based on only 55 individuals, and therefore caution must be exercised before drawing generalised conclusions from it. We accept that some people in Kabul are suspicious of and hostile towards returnees. However, the evidence before us, considered together and as a whole, points to returnees facing challenging circumstances not because they have returned from the west (risk from westernisation was categorically rejected in the 2018 UT decision (at para. 187) and this finding was not appealed), but primarily because of poverty, lack of accommodation and the absence of employment opportunities, as well as the security situation. The mere fact of being a returnee does not prevent a person accessing accommodation (the evidence is that the "tea house" accommodation is available to all males) or being taken on for day labour work in the informal market. Nor does it prevent a person establishing, or re-establishing, a network, although care would need to be taken to avoid people who are hostile to returnees.
252. Taking a holistic view, and considering all of the circumstances together, we are satisfied that generally it would not be unreasonable for a single healthy man to relocate to Kabul, even if he does not have any family or network in the city and lacks a Tazkera. However, in all cases an individualised case-by-case assessment is required, taking into account an individual's personal circumstances including factors such as his age, health, disability, languages spoken, educational and professional background, length of time outside of Afghanistan, connections to and experience of Kabul and family situation and relationships."

Findings and Reasons

28. This Appellant has been found to be credible in respect of his account. Ms Everett indicated at the hearing that it was conceded that he was at risk on return to his home area. This is a realistic concession considering the positive findings that were made by the First-tier Tribunal. The power base of the Mohseni family is in Baghlan Province, specifically Andorab, the Appellant's home area. The Appellant is at risk on return to his home area from the Mohseni family, members of which killed his father and brother.

29. We must now consider whether it would be safe for the Appellant to relocate to Kabul. We attach weight to Dr Giustozzi's evidence. We accept that the family would still have an interest in the Appellant because of a family feud and they may perceive the Appellant wishing to avenge the death of his father and brother. The family presents a risk to the Appellant in his home area. There is no reason why they would not present a risk to the Appellant outside his home area, should his presence in Kabul come to their attention; however as conceded by Dr Giustozzi, in Kabul it will be harder for the Appellant to be tracked down. He does not express an opinion in his report concerning the likelihood of the family tracking down the Appellant in Kabul. We are not sure whether he was specifically asked to comment on this by the Appellant's solicitors. His evidence is that their influence is waning in Baghlan province; however, it remains strong in the Appellant's home area. We bear in mind that the family remains generally influential with criminal intentions. While we accept that should the family locate the Appellant he would be at risk, we find that the evidence does not establish that the reach of the family extends to Kabul or that it is reasonably likely that the Appellant would be tracked down should he return there. We accept that should the Appellant return to Kabul he may as a westerner be considered with some suspicion and we accept that the Appellant's uncle is known within his local community because he was a pharmacist. However, there is a gap in the evidence concerning the family's ability to locate the Appellant in Kabul. From the background evidence, their power base in Baghlan is waning generally. The bibliographies accepted by the First-tier Tribunal do not establish that the family have significant influence through Afghanistan that would support them becoming aware of the Appellant's return and being able to track him should he return to Kabul. Dr Giustozzi's evidence does not support this. However, while there is no objective fear, we accept that there is a genuine subjective fear which is a material factor when assessing the reasonableness of relocation.
30. We would have no hesitation in finding relocation reasonable in the absence of a genuine subjective fear expressed by the Appellant and his family. There was no challenge to the evidence of ZS. We found him to be a credible and straightforward witness. Ms Everett did not challenge his evidence which was that his brother, the Appellant's uncle would not be able to offer meaningful support to the Appellant because he would fear that his presence would put him and his family at risk. While the evidence does not establish that it is reasonably likely that the Appellant would be tracked down by the Mohseni family on return to Kabul, we accept that if he is, he will be killed. We find that there is a genuine subjective fear felt by the Appellant and his family that he will be tracked down and killed.
31. We accept that there is an ongoing feud which is not time- limited. We accept that there is some support for the Appellant in Kabul; however, it will be limited because his uncle fears association and putting his own family at risk.
32. This will not only limit support that the uncle will give to the Appellant, but it will also impact the Appellant's ability to reintegrate and access support. He is depressed and stressed here in the United Kingdom at the prospect of return to what he perceives to be death. The evidence does not establish his fear is objective because of the gap in the evidence, but it is rational considering the murder of his father and

brother and the ongoing feud with a family that still has significant influence in his home area.

33. We do not find that it is reasonable to expect the Appellant to return to Kabul where he genuinely perceives that he will be tracked down and killed by those who murdered his father and brother. His family who can provide a network would be significantly compromised by his return. We find that this will severely limit the effectiveness of the support that they will give to him. The Appellant's own genuine fear will limit his ability to access support or develop a support network. Considering all matters including the Appellant's personal circumstances, we conclude that it would not be reasonable to expect him to relocate to Kabul.

34. The Appellant's appeal is allowed on protection grounds.

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 their 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 *Joanna McWilliam*
Upper Tribunal Judge McWilliam

Date 20 January 2021

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make no fee award

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

Joanna McWilliam
Signed
Upper Tribunal Judge McWilliam

Date 20 January 2021