



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

Appeal Numbers: PA/08782/2019  
& PA/08785/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
By Skype for Business  
On 15 March 2021**

**Decision & Reasons  
Promulgated  
On 14 July 2021**

**Before**

**UPPER TRIBUNAL JUDGE OWENS**

**Between**

**FP  
MP**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr Lee, Counsel, instructed by Ata and Co Solicitors  
For the Respondent: Ms Pettersen, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

This is an appeal against the decision of First-tier Tribunal Judge Lewis sent on 20 March 2020 dismissing the appellants' appeals against the decisions dated 29 August 2019 refusing their protection claims. Permission to appeal was granted by Upper Tribunal Judge Allen on 18 September 2020.

The hearing was held remotely. Neither party objected to the hearing being held in this manner. Both parties participated by Skype for Business. I am satisfied that a face-to-face hearing could not be held because it was not practicable due to the current COVID-19 situation and that all of the issues could be determined fairly by way of a remote hearing. Neither party complained of any unfairness during the hearing.

### **Anonymity**

This direction is made because this is a protection matter and the first appellant is a vulnerable individual with mental health problems.

### **Background**

The appellants are a mother and daughter, both nationals of Afghanistan. The first appellant lived with her husband and children in Afghanistan prior to the family relocating first to Pakistan and then to the United Arab Emirates because of her husband's work. She travelled to the UK as a visitor in March 2018 with her family. The first appellant's husband claimed asylum on 17 May 2018 with the first and second appellants as his dependents. After her husband's asylum appeal was dismissed on 14 January 2019, the first appellant claimed asylum in her own right on 13 May 2019. Her husband is now dependent on her asylum claim. The second appellant claimed asylum in her own right on the same day as her mother.

The appellants claim to fear serious harm on return to Afghanistan. The first appellant asserts that her son converted to Christianity many years ago and her husband's extended family do not approve. She and her husband are afraid of her husband's stepbrothers because they want to force their daughters into marriage and will hurt them on account of their son's Christian beliefs. The second appellant is also frightened that she will be forced into marriage and fears that the extended family will harm her because they suspect she has also converted to Christianity. The appellants also fear the Taliban who have tried to extort money from the family and threatened them. This was essentially the same account which was put forward in the first appellant's husband's claim for asylum.

It is also asserted that both appellants have significant mental health problems and that they would experience treatment contrary to Article 15(c) on account of their mental health problems in Kabul.

By way of a letter dated 29 August 2019, the Secretary of State refused the asylum claims. The respondent pointed to a lack of detail and inconsistencies in the accounts and relied on the findings of First-tier Tribunal Judge Stedman in the first appellant's husband's appeal which was heard on 4 June 2019. These findings formed the starting point for the second appeal because the appellants relied on the same factual matrix. Judge Stedman found that the first appellant's husband had fabricated his account of being attacked and threatened by the Taliban in April 2018. The judge found that there was no real risk of serious harm to the first appellant's husband from the Taliban. The

judge found that any difficulties with the appellants' father's family was not connected with the Taliban. The respondent also relied on the findings of First-tier Tribunal Judge Stedman in respect of the claim of the fear of forced marriage. In summary, First-tier Tribunal Judge Stedman accepted that the family were affluent, educated and successful; that there had been a long standing property dispute with the extended family and the first appellant's husband may have been at risk of robbery because of his wealth. The judge also found that the extended family may have had concerns about the son's conversion to Christianity and may have asked for the family's eldest daughter's hand in marriage. However, the judge found that since forced marriage is a breach of sharia law and the family including her father supported her decision not to marry the extended family member, she was not at risk of being forcibly married. Further, she could seek the protection of the police.

The respondent rejected the first appellant's new claim that the second appellant had been threatened as a result of a suspicion that she had converted to Christianity because a photograph, taken of her in front of a church, was posted on social media because of inconsistencies in the account.

The Secretary of State considered that it would not be unduly harsh for the appellants to return to Kabul as women because they would be returning as a family unit with the first appellant's husband. The respondent, in accordance with the Country Guidance, considered that there was no risk of treatment contrary to Article 15(c) on account of indiscriminate violence merely be being present in the country. The respondent considered the medical evidence and noted that treatment was available in Afghanistan.

### **The decision of the First-tier Tribunal**

Both appellants gave oral evidence.

The judge took First-tier Tribunal Judge Stedman's findings in the first appellant's husband's appeal as his starting point. The judge assessed the evidence of both appellants and found that there were considerable inconsistencies in the evidence as well as difficulties with it. The judge addressed the further evidence which was produced in support of the appeal including the medical evidence, screenshots from a mobile phone as well as a letter from the Taleban and an expert report.

At [45] the judge noted that the expert who had been asked to verify the documentation did not support the appellant's account. Dr Guistozzi, through one of his trusted researchers, approached the Taleban directly. The Taliban military commission member approached, stated that the 'Taliban warning letter' was not written by the Taliban and was a scam.

The judge commented that much of the evidence of the witnesses was secondhand testimony as to what happened to the first appellant's husband, whose account had been disbelieved in the first appeal. The judge then went on to address the medical reports at length. The judge found that neither

appellant had a well-founded fear of persecution on return to Afghanistan. The judge turned to Article 15(c) of the Qualification Directive. The judge took into account evidence from the UNHCR and the European Asylum Support Office. He found that there was no Article 15(c) risk to either appellant on their return to Kabul. He found that any Article 3 or 8 ECHR medical claim was not made out. The judge found that there would be no breach of Article 8 ECHR and dismissed both appeals.

## **The Grounds of Challenge**

The appellant submits that the decision of the First-tier Tribunal is flawed in the following material respects:

### Failure to take into account material considerations/taking into account irrelevant considerations

- (i) The judge failed to take into account relevant factors including the evidence of the expert Dr Antonio Giustozzi that the provision of mental health care in Afghanistan is almost non-existent and the UNHCR guidelines include individuals with disabilities including mental disabilities and persons suffering from mental illness in the category of those potentially at risk on return.
- (ii) The judge failed to take into account the evidence that for a very significant period of time the appellants were not in Afghanistan. In the last 20 years, the first appellant has spent only four of those years in Afghanistan and that is clearly relevant to an assessment of whether looking forward the first appellant would be able to manage her mental health difficulties in Afghanistan in much the way it has hitherto. The judge failed to take this into account, and it was material to the assessment.
- (iii) The judge failed to take into account the first appellant's evidence that she was unable to secure any medication on a consistent basis in Afghanistan and was reliant on times on fake and sub-standard medication.
- (iv) The judge's approach to the medical support available in Afghanistan is equally flawed. The judge states that it is not suggested that there were no mental health facilities in Afghanistan and points to the relative affluence of the appellants as given them an advantage. This leaves out of account the evidence of Dr Giustozzi about the lack of treatment and there was no evidence that relative affluence can facilitate access to mental health treatment and medication. This consideration was irrelevant.

## **The Rule 24 Response**

The respondent asserts that the judge directed himself appropriately. The judge applied the Devaseelan guidelines and observes at [27] that the claims being advanced by the first and second appellant was, at their core identical to those advanced in the earlier proceedings. At [44] the judge refers to the

various medical and expert reports observing at [45] a report by Dr Giustozzi contradicts the appellant's claim that the appellant's husband received a demand for money from the Taliban.

It is submitted that the judge gave detailed and anxious scrutiny to the medical evidence and its implications throughout the determination and particularly at [48] to [58] and [104] to [112]. The judge made a plethora of cogent findings based on the medical reports and had the additional benefit of observing the appellants in person during the hearing. The judge observed at [51] that Dr Heke did not consider or offer any opinion in respect of the first appellant's experience of giving evidence previously and any subsequent impact on her mental health. It was open to the judge to reject the diagnosis of PTSD at [59].

The issue of return to Afghanistan is considered at length by the judge from [98] and the judge finds that the appellants would not be at risk, taking into account their mental state, the fact that they are returning to their home city and that the first appellant's husband owns property in the area thus they will not be financially unsupported. They also have a family network available from whom they can obtain practical and emotional support.

## **Discussion and Decision**

### **General background**

Mr Lee clarified at the outset of the appeal that the judge's findings in respect of the asylum claim are not under challenge. It is accepted that neither appellant will face a real risk of serious harm on account of a Convention reason if returned to Afghanistan. There is also no challenge to the judge's negative credibility findings.

It is important to note that the two appellants are a mother and daughter who would be returning to Afghanistan with the first appellant's husband who is the father of the second appellant in a family unit. It is agreed that the family's hometown is Kabul and that the family own property there. The issue in this appeal is not the reasonableness of internal relocation because there is no suggestion that the appellants will be subject to treatment amounting to serious harm anywhere in Afghanistan.

The judge's findings are also made against the background of this family having spent considerable periods abroad. The appellant's husband worked abroad in Pakistan until 2010 and thereafter the family returned to Afghanistan before they travelled to the United Arab Emirates in 2014 because the first appellant's husband had employment there. In 2018 the family travelled to the United Kingdom on a visit visa and claimed asylum. The family are affluent, educated and have the means to travel internationally with a history of working in Pakistan, India and the UAE.

The first appellant's oldest daughter has claimed asylum in her own right and their son has status in the UK having claimed asylum in the UK many years ago.

There is no challenge to the judge's finding at [103] that the first appellant's husband retains control over a significant property portfolio in the city, that the family has access to accommodation and have substantial family funds. The judge made this finding after hearing oral evidence from the first appellant's husband that he owned several properties and land in Kabul. The judge also found that he retains control over these properties because he has continued to own them despite spending considerable time abroad. There is also no challenge to the judge's finding that he is not satisfied that the first appellant does not have a family network in in Kabul from whom the appellants can draw practical, emotional and further financial support.

### **Judge's findings on first appellant's mental health**

In order to determine whether the judge erred in respect of the availability of treatment in Afghanistan it is necessary to consider the judge's findings in respect of the first appellant's mental health.

No challenge is made to the findings of the judge following his detailed examination of the evidence of the first appellant's mental health problems. This analysis stretches from 53(i) to (xi). I summarise only this lengthy consideration.

The judge accepts that Dr Heke has the qualifications and experience to prepare such a medical report. The judge notes that the first appellant was examined in one session lasting 2 hours in which the first appellant 's son constantly interrupted, and Dr Heke ran out of time. The judge notes that the first appellant's depression predated the specific events currently relied upon and that she had been depressed for over 20 years due to constantly moving around. The first appellant was said to be worried about her family and current social circumstances and the impact on her son's relationship with his wife as a result of the family living in her son's home. Her depression was also exacerbated by her immigration situation.

The judge also noted that the doctor did not have full regard to the issue of the first appellant's weight loss which was not recorded in detail in the GP records and may have been attributable to a change of diet. This fed into Dr Heke's diagnosis of PTSD.

The judge found that the appellants had not given a candid account of their situation to Dr Heke. For instance, they stated that they would be destitute in Kabul to Dr Heke, however in the course of the evidence in the hearing it became apparent that they own properties. Dr Heke's conclusions in relation to the first appellant being overwhelmed with the fear of being destitute and having a suicide risk based on destitution are not reliable in these circumstances. Dr Heke did not consider the first appellant's return to Afghanistan in the context of her returning with her husband and daughter. Her opinion was given on the basis of the appellant returning as a single woman who would establish herself independently. Dr Heke also failed to overtly acknowledge the limitations in self-reporting in psychometric measure in a

situation where the questionnaires had been filled in so that he first appellant obtained the maximum scores.

At [54] the judge notes that Dr Heke's opinion is that the first appellant "meets the full diagnostic criteria for a severe major depressive disorder and comorbid PTSD and severe anxiety" and "the depression has been very long-standing predating her immigration problems, whereas the anxiety is primarily related to her hopelessness and worry regarding her and her family further should she be returned to Afghanistan".

The judge found that report suggests that the appellant is worried about her specific circumstances rather than meeting the criteria of generalised anxiety disorder.

The judge at [56] rejected the doctor's opinion that the PTSD was "directly attributable to consistent reports of being threatened in Afghanistan and living through daily war related traumatic events" and that it is "the accumulative and repeated exposure that has led to the severity of the symptoms rather than specific traumatic events". The judge found that depression was the primary problem and noted that the first appellant has not reported being the direct recipient of any specific threat either whilst in Afghanistan or otherwise and at interview did not express a fear for herself rather than for her daughters. The judge noted that the family were planning to return to Afghanistan until 2018 and that the lack of available time and Dr Heke's misunderstanding of the first appellant's experience have undermined her ability to make a proper assessment.

At [58] the judge states

"Overall, I consider Dr Heke to have prepared a careful report- as is indicated by the nuanced consideration of the PTSD symptoms. However, as Dr Heke acknowledges there were limitations in the time available for the assessment and the interventions of M presented FP for speaking for herself at times. Further in my judgement Dr Heke was impeded by the inaccurate reporting of FP's circumstances and prospects particularly with regard to the notion of possible destitution. Dr Heke also unjustifiably focussed on FP's ability to function independently: in reality there was no foundation for certain premises of the assessment. Moreover, I consider Dr Heke to have been insufficiently critical on her consideration of the nature of the self-reporting psychometric measure assessment tools. Dr Heke was seemingly also unaware that FP had previously given evidence in an appeal before FTT(IAC). Bearing in mind the other concerns I have expressed about the misrepresentation of circumstances during the assessment, I find that the presentation of FP's symptoms was exaggerated. This is not to deny the essential nature of the underlying diagnoses of depression and anxiety, but it is to conclude that I am not satisfied that either condition is properly to be as characterised as severe".

At [59] he continues;

"Pursuant to my observations above, I do not accept the diagnosis of PTSD. I accept that FP has chronic depression the onset of which predates and is therefore unrelated to the particular events advanced in support of the asylum claim".....

The judge's findings have not been challenged as inadequately reasoned or as irrational. The grounds do not challenge the judge's approach to the medical report.

Dr Heke noted that the first appellant was currently taking naproxen, citalopram 40mg and Amais 8mg. She had not had counselling at all and there were barriers to accessing counselling because of an inability to focus. The first appellant stated that the medication was not helping but that she was worried she would not be able to access it in Afghanistan. The doctor recommends that she continue her medication and have CBT therapy. The first appellant's own evidence was that she had long term depression and had been taking medication for depression and high blood pressure. She also referred to medication in Afghanistan being fake and ineffective and getting better medication in Dubai.

### **Mental health of the first appellant's husband**

The judge's findings on the first appellant's husband are at [88] following a similarly extensive and detailed examination of the medical report by Dr Joliffe at [87] (i) to (x). The judge accepts the diagnosis of PTSD and anxiety but finds that his symptoms have been exaggerated.

The grounds do not challenge the judge's approach to the medical evidence nor the findings on the first appellant's husband's mental health.

### **Judge's summary of findings on mental health**

The judge's ultimate findings in respect of the first appellant's and her husband's mental health conditions are at [109] and are as follows;

"For the reasons already given, I am not satisfied that GP's mental health symptoms are as extreme as claimed or as found by Dr Joliffe. I am not satisfied that he is significantly functionally limited such that he cannot cope with all aspect of daily living activities or continue whether personally by instructing others, to manage his property portfolio. I accept that FP has chronic depression, but that this is something she has managed with for 20 years or more. I acknowledge that her anxiety arising from her particular predicament - she does not strictly speaking meet the criteria of generalised anxiety disorder - is unlikely to reduce upon the prospect of return to Afghanistan. However, I am not persuaded that that cannot be managed in much the way it has hitherto - through family support and medication".

### **Judge's findings on availability of treatment.**

At [110] the judge states;

"I have had regard to the materials to which I have been referred in the Skeleton Argument in respect of mental health in Afghanistan..... ..Otherwise it is to be acknowledged that there has been a significant mental health impact on the population of Afghanistan by reason of years of conflict and insecurity and the limited medical facilities have struggled to meet such needs. That said, it is not suggested that there are no mental health facilities



in Afghanistan. In my judgement the relative affluence of FP and GP will give them a significant advantage in accessing medical support”.

At [112] the judge states;

“I find that the appellants have not shown that the mental health conditions of either FP or GP cannot adequately be managed in Afghanistan with the care and support, as well as practical assistance of MP and ZP, and if necessary FP’s bother and family and through available medical facilities. In respect of the availability of medical facilities, I am not satisfied that the family is unable to access a significant level of care on a private basis because I am not satisfied that GP has been candid about his means”.

## **Discussion on grounds of appeal**

A - Failure to take into account the fact that for a very long period the appellant was not in Afghanistan and that this was material to any assessment of the first appellant’s ability to manage her condition as she has done “hitherto”.

It is manifest from reading the decision that the judge was aware that the first appellant had lived abroad and that she had only resided in Afghanistan for a brief period of four years between 2010 to 2014 in more recent times. At [4] he sets out the chronology of where the family have lived commenting that the family lived in Pakistan between 2000 and 2010 when they returned to Afghanistan before relocating to the UAE in 2014 until 2018 from where the family travelled to the UK on visit visas.

This period of living abroad is mentioned at various places in the decision including in the detailed analysis of the medical report which refers to the first appellant running to one city to another over a number of years. The judge has manifestly taken into account that the first appellant has lived outside of Afghanistan when considering the impact on her mental health on her return. The judge finds that the first appellant has been depressed for many years including times when she was living in Pakistan, Afghanistan, UAE and the UK. The evidence before the judge was that the first appellant had managed her depression with anti-depressants and family support. The judge accepts that she will continue to be depressed on her return to Afghanistan.

The submission that the judge erred by failing to take into account the lengthy period she has lived outside Afghanistan is not sustainable. The judge manifestly took this into consideration.

B - The judge does not take into consideration the first appellant’s evidence that she was unable to source medication on a consistent basis in Afghanistan and was reliant on fake and sub- standard medication.

The first appellant’s evidence was she had taken ineffective medication in Afghanistan and her regime was changed in Dubai. She also stated that there is fake medication in Afghanistan.

The judge does not explicitly refer to this evidence when making his findings about the availability of treatment to the first appellant in Afghanistan, but I am satisfied that the issue of fake and substandard medication was dealt with at length by Dr Guistozi in his report which was considered by the judge and I deal with this ground below. I also note that the judge found all of the witnesses to be lacking in credibility and to have exaggerated various aspects of their accounts and in respect of some of the witnesses to have been evasive about their living circumstances in Afghanistan.

C - Failure to take into account the expert evidence on the availability of medication in respect of the lack of comparable medical treatment, that facilities were badly compromised and that the judge's conclusion that the appellants would be able to access medical treatment because of their relative affluence is flawed because this is not supported by the background evidence or the expert report.

It is also submitted by Mr Lee that there was no evidence to support the judge's conclusion that the relative affluence of the appellants in some way gave them an advantage in obtaining healthcare and that the judge took into account an irrelevant factor.

The evidence before the judge in respect of the availability of medical treatment was partly in the form of expert evidence from Dr Guistozi.

At paragraph 41 of his report he states;

"In Afghanistan Mrs P would not receive a level of mental health care even remotely comparable to what she would received in the UK. Outside a few cities (see below) the provision of mental health care in Afghanistan is almost non-existent. The country's only mental health hospital (Kabul) is in a bad condition due to war damage and lack of maintenance. The provincial hospital in Jalalbad has a mental ward, which however lacks the support of any fully qualified psychologist or psychiatrists. Furthermore, it lacks equipment. The hospital has 60 beds according to 2011 statistics. In 2012 the Kabul mental health hospital still only has 60 places although the number of psychiatrists operating there has gone up to 6 from 2 in 2020. Plans to expand facilities with the building a new hospitals were never implemented. There is a problem of understanding as many of the already limited number of trained mental health profession have left the country. In 2010 there were only two fully trained psychiatrists in the whole of Afghanistan, a few psychiatric nurses and not even one psychologist; 40 more psychiatrists and psychologists had received partial training. There are about 30 other doctors who have received some training in mental health care without being fully qualified psychiatrists. By 2017 the number of partially trained doctors had gone up from 70 to 101. It should also be noted that to be admitted to this hospital in Kabul it is necessary to be accompanied by a relative all the time".

At 42 he states;

"If we consider that according to the WHO as of 2010, about 60% of Afghans suffer from various forms of mental health problems, it is obvious that the chances of having access to care for the average Afghan patient with mental health conditions are slim indeed. The opportunities for psychosocial support

are almost non-existent in Afghanistan, mainly because of the extreme shortage of trained mental health professionals... This situation led a doctor to define the mental health care system of Afghanistan as almost non-existent during a briefing to the Congress of the United States in 2006. Since then, little has changed”.

Dr Guistoizzi then goes on to deal with the fact that the European Union is supporting the rehabilitation of the mental health hospital in Kabul and paid for the construction of a new building. The capacity is of 60 beds. Counselling is available in small clinics thinly distributed around the country. In Kabul they are few and far between. Some international NGO's offered training and help to the Afghan mental health service.

He then turns to the availability of medication and in summary states that in recent years a number of psychotropic drugs have become available in Afghanistan usually imported from Pakistan and mostly illegally (80%). Patients have to pay for these drugs, there is no subsidy on medication. The only cheap option is unreliable Pakistani products. “Imports from the Arab Gulf or Germany are expensive and clearly unaffordable to the poorer strata of the population. There are issues with the quality of medicines due to counterfeits manufactured in Pakistan”. It is estimated that up to half of medicines circulating in Afghanistan are Pakistani counterfeits. It is said that the percentage of the population with access to essential psychotropic medication is less than 1%. The cost of antidepressant medication is 9 Afghanis (16% of the daily minimum wage). Dr Guistoizzi then discusses the problems of distribution which is also problematic. He states that there is no 24 hours supervised care hostel for patients. All that is available is counselling for PTSD with 16 psycho-social centre spread around the Afghan cities of Kabul and Herat which essentially provide counselling to individuals suffering from mental health.

He then states that individuals will be considered by the Afghan health service for mental health care assistance if they present themselves to a clinic or hospital of their own will or are brought there by their relatives. It is only then a doctor will assess them and decide whether they are entitled to assistance. It will not be the case therefore of the healthcare service to proactively reaching out to Mrs P and she will need to actively seek medical health care. Her needs will be assessed against those of the large number of people who suffer from mental health conditions (approx. 2 million in Kabul but not all seeking medical support). It is unlikely that she would then receive more than cursory attention by the medical staff at the country's only mental health hospital.

Dr Guistoizzi then goes onto state that the real problem for the first appellant would be access because she will have to reside in a city with only Kabul offering a relatively wide range of treatment opportunities in the only mental health hospital in the country and even then she would have to compete with the large portion of the residence for the attention of a handful of mental health staff.

In summary, Dr Guistozzi's evidence is that there is some treatment for mental health conditions particularly in Kabul although resources are scarce and there is competition for treatment. His evidence is also that it is possible to obtain medication from abroad if you have sufficient income. Reliable medication can be obtained at higher cost from Germany and the Arab Gulf whilst the cheaper medication from Pakistan is often substandard and frequently counterfeit. His evidence is that if you are from a poor background, it will be extremely difficult to obtain reliable and good quality medication.

It is important to note that Dr Guistozzi's conclusions appear to be premised on the basis of the first appellant returning alone and not being able to access accommodation due to the high cost of living and her likely inability to have sufficient financial resources. He points to her difficulties in accessing accommodation and employment.

These factors are contrary to the findings of the judge that the family has a substantial property portfolio and access to accommodation and substantial financial means. These findings are not challenged by the appellant.

The appellant does not particularise which aspect of Dr Guistozzi's evidence the judge did not take into account.

At [44] the judge expressly lists Dr Guistozzi's report as a document before him and states that he will return to the documents below. The judge refers to Dr Guistozzi's report at [95] and at [104].

The judge has manifestly taken into account Dr Guistozzi's evidence in relation to the availability of drugs which indicates that more wealthy Afghans are able to import reliable medication from abroad. I find that there is no error in the judge's conclusion that the first appellant will have better access to medication because of her affluence. I do not agree with Mr Lee that there is no support for this in the background evidence.

Dr Guistozzi's conclusion as to the availability of treatment does not suggest that there is private treatment available, (although the report is silent as to whether he was asked to address this) but does indicate that in terms of "access" to treatment it is important to be able to live and survive in Kabul and that treatment might affect studies or employment. His report in this sense suggests that access to treatment will be for easier for those with independent means. The judge's findings are not contrary to the background evidence in this respect.

The judge's reference to "medical facilities" is less clear. In order to consider if the judge has erred, the judge's findings in respect of the ability of the appellant to access facilities must be put into the context of what facilities she would need to access. The evidence before the judge is that the first appellant has suffered from depression for a long time and over the years the first appellant has received support from her family and taken anti-depressants. She has not had counselling. The judge's finding that the first appellant will be

living in Kabul with her husband and daughter and that she has other family support is not challenged.

My view, after a careful consideration of the evidence before the judge and a careful reading of the decision as a whole is that the judge did take into account the contents of Dr Guistozzi's report with respect to the availability of treatment and his conclusion that the appellants' relative affluent would assist her to obtain medical services is not contrary to the background material. The judge's conclusion that the first appellant's affluence will assist her to obtain medical facilities is neither irrational nor perverse. I am satisfied that this ground is not made out.

The judge's finding that the appellant would be able to continue to manage her depression in much the same way as she had over the last 20 years is adequately reasoned. On the evidence before the judge the first appellant will be able to access antidepressants, and her family can provide emotional support. There is some other mental health provision that she can attempt to access such as counselling although the judge acknowledges that resources are limited, and mediation may be substandard. She will return with her husband and daughter, and she has extended family members in Kabul.

In his submissions Mr Lee referred to DH (Particular Social Group; Mental Health) [2020] UKUT 223 which he acknowledges was handed down on 5 July 2020 after the judge's decision. Other than submit that there is no suggestion in the authority that relative affluence affects access to effective medical care he did not particularise this any further and I have dealt with the judge's findings on the availability of medication and treatment in the paragraphs above.

Looking at the decision as a whole I am not satisfied that there is an error in the judge's findings on the availability of treatment.

#### D - the judge failed to take into account the UNHCR guidelines

It is submitted that the UNHCR guidelines include "individuals with disabilities, including in particular mental disabilities and persons suffering from mental illnesses in the category of those potentially at risk on return. It is said that all of the medical evidence went to the elevated risk of Article 15 (c) applying the sliding scale approach in Elfaji and Diakite (C-285/12); [2014] 1 WLR 2477.

At [46] the judge notes that the UNHCR guidelines are reproduced in the bundle from pages 150 to 275. The judge refers to the UNHCR report at [102]. He notes that particular reliance is placed on the UNHCR Guidelines to the effect that given the current security, human rights and humanitarian situation in Kabul, IFA/IFA is generally not available in the city. The judge notes that Kabul would not be a place of internal relocation to for the appellants but "a return to their home city".

The judge states that the difficulties of poor access to livelihood, food and shelter do not apply to the appellants and that they have a family to rely on.

I am satisfied that the judge has taken into account these guidelines. At [108] the judge refers to Mr Lee's submission in his skeleton argument that there is an elevated threat because of the first appellant and her husband's health conditions. The judge was manifestly aware of the submission. The judge points to the fact that their medical conditions have been exaggerated and that some treatment was available. The judge gives consideration to the medical reports and the treatment available. I am satisfied that it was open to the judge to find that the appellants have not shown that their medical conditions cannot be managed. I am satisfied that the judge properly considered the contents of the UNCHR report and rationally concluded that there was no elevated risk to the appellants on the basis of their individual health problems and personal circumstances.

There is no challenge to the remainder of the judge's findings in respect of Article 15(c) at [102] to [107]. The judge properly considers that the generalised risk of violence in Kabul does not meet the criteria for humanitarian protection and considers the various reports on the current situation. There is no challenge to the judge's finding that the appellants would not face treatment contrary to Article 3 ECHR because their health would deteriorate to the required extent.

I am not satisfied that any of the grounds are made out.

### **Decision**

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

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

I am mindful of Guidance Note 2013, No 1. concerned with anonymity orders and I observe that the starting point for consideration of anonymity orders in this Chamber of the Upper Tribunal is open justice. However, I note paragraph 13 of the Guidance Note where it is confirmed that it is the present practice of both the First tier Tribunal and this Tribunal that an anonymity direction is made in all appeals raising asylum or other international protection claims. Pursuant to Rule 14 of the 2008 Procedure rules I make an anonymity direction.

'Unless and until a Tribunal or court directs otherwise, FP and MP are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings'.

Signed

R J Owens

Date 7 July 2021

Upper Tribunal Judge Owens

