Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10688/2019 (V)

THE IMMIGRATION ACTS

Heard remotely from Field House	**Decision & Reasons Promulgated**
On 25 August 2021	**On 21 October 2021**

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

JK
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant or members of his family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Representation:
For the appellant: Ms T Jaber, Counsel, instructed by Sutovic and Hartigan
For the respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is the re-making decision in the appeal of JK ("the appellant") against the respondent's refusal of his protection and human rights claim. This follows my previous decision, promulgated on 19 January 2021, by which I found that the First-tier Tribunal had erred in law when dismissing and that its decision should be set aside. In so doing, a number of findings were preserved:

(a) that there was never an illicit relationship between the appellant and his cousin;

(b) neither the appellant nor his family faced any difficulties from an uncle or anyone else in Afghanistan;

(c) that the appellant has family and friends residing in Afghanistan with whom he either actually has maintained contact or could reasonably re-establish such contact;

(d) that the appellant does suffer from mental health conditions and has received treatment for these in the United Kingdom;

(e) that the appellant's home area in Afghanistan is Kapisa Province.

2. The issues to be addressed in the re-making of the decision in this case were set out as follows:

(a) whether the appellant's removal to Afghanistan would expose him to a real risk of suicide;

(b) whether he would be able to access appropriate treatment for his mental health conditions in Afghanistan;

(c) whether he could return to reside in his home area or, if necessary, relocate to Kabul without facing a risk under Article 15(c) or it being unduly harsh to do so;

(d) whether it would be a breach of Article 8 for him to return to Afghanistan, with reference to paragraph 276ADE(1)(vi) of the Rules or a wider proportionality exercise.

3. It can be seen that there is no longer any issue relating to the Refugee Convention. Aside from the live issues of Articles 3 and 8 ECHR, I will return to Article 15(c) QD, below.

4. My error of law decision is annexed to this re-making decision.

The respondent's application for an adjournment

5. Just over a week before the resumed hearing, dramatic events unfolded in Afghanistan with the fall of Kabul to the Taliban. To what extent this was entirely unexpected may be a matter for debate, but the situation plainly developed at a rapid pace, which in turn presented the parties with challenges as to the presentation of evidence addressing the current state of affairs.

6. On 16 August 2021, the respondent made a written application for an adjournment of the resumed hearing on the basis that new guidance on Afghanistan was being developed and that a re-listing of the appeal in approximately two months would be appropriate. This application was refused by an Upper Tribunal Judge the following day.

7. At the hearing, Mr Tufan renewed the application. He submitted that the situation in Afghanistan was "fluid" and that the respondent was "anticipating" the publication of a new CPIN within "approximately four weeks."

8. The renewed application was opposed by Ms Jaber. She submitted that the appellant's case had already been subject to lengthy delays, that there was now sufficient evidence before the Tribunal to proceed, that the respondent had in general failed to engage with this case over the course of time, and that the appellant's mental health was such that a further adjournment would be detrimental.

9. I refused the respondent's renewed application for an adjournment. The situation in Afghanistan was indeed "fluid", but it was now over a week since the Taliban took control of Kabul itself. In this time, the appellant had made efforts to obtain and provide evidence on the current situation. In my view, there was a sufficient evidential basis, combined with the preserved facts and evidence previously served, to fairly proceed to determine the appeal. The arrival of a new CPIN was, to an extent, speculative, at least as to the timescale. It was highly likely that the situation in Afghanistan would remain "fluid", even then. In all the circumstances, I concluded that it was fair and in the interests of justice to proceed.

10. Having made this decision, I gave Mr Tufan time to read Ms Jaber's note and the new evidence relating to the current situation in Afghanistan. Having done so, Mr Tufan confirmed that he was content to proceed.

The evidence

11. I have considered the following evidence when re-making the decision in this case:

(a) the respondent's original appeal bundle;
(b) the appellant's consolidated bundle, indexed and paginated 1-573 ("AB" - this includes significant medical evidence, together with expert country reports);

(c) a supplementary objective bundle ("SOB"), indexed and paginated 1-94;

(d) media articles dated 16 and 24 August 2021.

12. Mr Tufan confirmed that all but one of the CPINs on Afghanistan had been withdrawn by the respondent. The remaining CPIN relates to medical care in Afghanistan. I expressed a concern at the hearing as to why this had not been withdrawn along with the others. It seemed, at first glance, that it was somewhat artificial to disassociate entirely the availability of medical treatment from the current situation on the ground. However, notwithstanding this concern, I have taken the evidence contained in the CPIN into account.

13. The appellant attended the remote hearing, but did not give oral evidence.

Submissions

14. Ms Jaber relied on her detailed skeleton argument dated 5 July 2021 and her supplementary note dated 24 August 2021. Both documents helpfully made copious reference to AB and SOB. I have to say that the Tribunal is always assisted by such references been included in written arguments and Ms Jaber's submissions were given additional force by the clear links made to the evidence said to underpin them.

15. I hope I do Ms Jaber no disservice by only briefly summarising her oral submissions here. They followed the written arguments and focused on the following issues:

(a) the appellant's mental health conditions and the care package currently in place in the United Kingdom - both was said to be significant;

(b) what was likely to face the appellant were he to return to Afghanistan now - it being said that there would be wholly inadequate care, a significant deterioration in his mental health, familial and/or societal stigmatisation, and the consequent risk of suicide or at least very significant obstacles to a re-integration into Afghan society.

16. Additional references to the documentary evidence contained in AB and SOB were provided.

17. In addition to her reliance on Articles 3 and 8, Ms Jaber maintained her position that Article 15(c) QD applied.

18. Mr Tufan submitted that there was no evidence to indicate that medical professionals in Afghanistan were being targeted by the Taliban, or that there was now no access to relevant medical treatment. He accepted the appellant's mental health problems and the treatment received in United Kingdom, but submitted that it was not a question of whether equivalent care would be available in Afghanistan. He accepted (in my view realistically, that the position on the ground in Afghanistan now could be described as "chaotic", but it would be possible for the appellant to re-establish contact with family members. Mental health problems were a common occurrence in Afghanistan. All-told, the appellant could not succeed on any basis.

19. Ms Jaber provided a concise reply, focusing on the overall lack of appropriate care on return.

20. At the end of the hearing I announced to the parties that I would be allowing the appellant's appeal on Article 3 and 8 grounds, and would reserve my decision in respect of Article 15(c) QD.

21. I now set out my analysis, reasons, and conclusions in respect of these three heads of claim.

The factual matrix in this case

22. In the first instance, I refer back to the preserved findings of fact listed earlier on in this decision.

23. I turn next to the central element of this case, namely the appellant's mental health. There has been no challenge by the respondent to the voluminous medical evidence in this case. That evidence is set out between 149 and 415 AB. Having considered it for myself, I find it to be compelling and clearly sufficient to establish the following basic facts as regards the appellant's mental health. I do not propose to quote from the medical evidence or to list the numerous references made by Ms Jaber in her written arguments and orally. The respondent will be well aware of what was relied on and what I have specifically taken into account.

24. I find that the appellant suffers from a severe Major Depressive Disorder, severe complex PTSD, and anxiety (see in particular, the report of Dr Sarah Heke, Consultant Clinical Psychologist, dated 28 June 2021). In January 2017 he made what has been described as a "serious" suicide attempt, taking an overdose of paracetamol which resulted in hospitalisation. It appears as though he had self-harmed prior to that, and did so again in 2018. The appellant has been on appropriate medication (including antipsychotics) for a prolonged period of time. He has been assisted by the Baobab organisation since 2018. Mr K Perkins, a

psychotherapist at Baobab, has provided significant and consistent help over the last three years or so. I regard his evidence as particularly strong, given his long-standing and frequent interactions with the appellant. In addition, the appellant has a key worker through the Peepal Tree organisation and a personal adviser at his local authority. He remains under the care of NHS adult mental health services.

25. The collective body of medical and other evidence shows that the appellant has the significant problems set out above notwithstanding the existence of what can properly be described as an intensive care package in this country, upon which he is "entirely dependent". I accept that the appellant lacks insight into his mental health problems, in particular with reference to his self-harming behaviour. I find that he has continued to express "persistent suicidal ideation". I also accept the opinion of Dr Heke that the Covid-19 pandemic has exacerbated the appellant's difficulties.

26. In light of the evidence as a whole, I find that as matters stand, and now taking into account the changed situation on the ground in Afghanistan (of which the appellant is aware) there is a high risk of suicide if he were to be returned there. I find this to be the case notwithstanding (on the basis of the adverse findings made by the First-tier Tribunal) any risk relating to the claimed family feud. The reliable evidence before me indicates that the risk is high due to a combination of a number of factors including his current circumstances and the threat of removal to Afghanistan even before the recent events in that country.

27. I find that the appellant is not in fact in current contact with any family members in Afghanistan. It may be that he has in the past been in contact and that he could, at least in theory, re-establish such contact, although recent events in Afghanistan would suggest that this possibility would now be more remote than it was. Importantly, the evidence makes it clear that the appellant does not wish to re-establish contact with his family. Whether, on an objective basis, this is a reasonable position to hold is really somewhat beside the point. The evidence shows that the mental health problems are pervasive and that they are likely to have had a significant impact on the appellant's desire to be reunited with his family. I find as a fact that the appellant currently does not want this to take place.

28. The evidence referred indicates that even if contact could be re-established with the family, it would not make a sufficiently material difference to the appellant's mental health problems and the consequent risks arising therefrom. I accept that the appellant comes from a poor rural background in Kapisa Province in Afghanistan. It is in my view highly unlikely that his family would be able to fund anything approaching the appropriate level of care necessary to treat and support the appellant (for the avoidance of any doubt, I am not drawing a line of equivalence and that which might be possible in Afghanistan).

29. Mr Tufan has submitted that many people suffer from mental health problems in Afghanistan, the implication being that it is a common

occurrence would not lead to discrimination against the appellant. The EASO country information report from June 2021 include evidence which indicates that, and stigmatisation does exist. One passage states that:

> "Mental disorders are one of the most misunderstood afflictions in Afghan society as they are exclusively tied to traditional medicine practices and irrational beliefs."

30. A very similar picture is painted in the respondent's own CPIN on medical care in Afghanistan (see section 12.5).

31. I find it to be more likely than not that the appellant's family would regard his current state of health as being a problem and a matter which would make any emotional and/or practical support a remote possibility.

32. Beyond that, I consider the provision of medical services relating to mental health. The position in Afghanistan has always been very problematic as regards the provision of appropriate mental health treatment. This has been so due to poor infrastructure, economic frailties, the effects of long-lasting conflict, together with societal attitudes.

33. On the evidence as a whole (with particular reference to the evidence referred to at paragraph 41, 43-49 of Ms Jaber's skeleton argument), I find that the appellant is highly likely to be faced with the following situation if returned to Afghanistan now:

(a) a lack of any meaningful financial support capable of funding not simply basic needs such as food and accommodation, but also appropriate medical treatment;

(b) non-existent or at least wholly inadequate mental health care, whether or not by way of free provision. In particular I find that there would be no treatment in the appellant's home area and the single mental health centre in Kabul (referred to at 12.2.1 of the CPIN) would be in no position to provide anything approaching an appropriate package of care for this particular appellant (see also section 12 of the CPIN as a whole);

(c) a non-existent or highly irregular provision of safe and appropriate medication, even if such medication could be funded;

(d) the current uncertainty caused by the Taliban's takeover of the country and the well-documented influx of people into Kabul, together with the likely inability and/or unwillingness and/or capacity of relevant medical professionals to operate at any reasonable level, or at all, will have exacerbated an already very difficult situation as regards mental health provision.

34. Even if, in theory, appropriate treatment was still available and even if there was some degree of family support, I find that the appellant's mental

health, in particular the suicidal ideation, is such that it is extremely unlikely that he would be able and/or willing to access any appropriate treatment on a regular basis.

35. I also find that as a returnee from the West, there is a serious possibility of him being, if not targeted for ill-treatment, then nonetheless the subject of suspicion and a degree of discrimination. Put shortly, he would be an individual who would be perceived as having lived in the affluent West for the last five years and would now be expecting to access the extremely thin resources (if they exist at all) in respect of which many-many existing residents of Afghanistan would be trying to obtain.

36. In summary, I find that this particularly unwell appellant would be placed in a situation of extreme vulnerability on return to Afghanistan.

Article 3

37. I now bring the factual matrix set out above into the context of Article 3 and the risk of suicide. In so doing, I apply the well-known guidance set out in J [2005] Imm AR 409, at paragraph 26-31.

38. In my judgment, the level of severity is clearly made out in this case. There is a high risk of the appellant actually taking his own life if returned to Afghanistan.

39. I am satisfied that there is a causal link between removal and the risk of suicide. The evidence clearly shows a strong connection between the appellant's fear of being removed and the suicidal ideation.

40. I have full regard to the high threshold applicable in suicide cases (and Article 3 medical cases in general). I have applied that high threshold to the evidence before me. It has been met by virtue of the strength of that evidence.

41. As to the well-foundedness of the appellant's fears of return, three points can be made. First, there is no fear in respect of the claimed family feud. Second, the appellant's fear of losing the care that he has been receiving in the United Kingdom, combined with the anxiety created by the Taliban's takeover of Afghanistan, is, in a very real sense, well-founded. It is a fact that the intensive care package in place here would be immediately lost on removal. It is a fact that he would not be able to access anything remotely approaching that level of care in Afghanistan. It is also a fact that the Taliban's assumption of control is causing great anxiety amongst large swathes of the population and the overall position on the ground is, to say the very least, highly uncertain. Third, a subjective fear of return can also be relevant in suicide cases (see Y [2009] EWCA Civ 362).

42. Finally, it will be apparent from what I have said earlier that there would not be effective mechanisms in place in Afghanistan to sufficiently reduce

the risk of suicide. On my findings, that risk is, as a starting point, high. The evidence relating to the provision of treatment in Afghanistan makes it abundantly clear that there simply would not be sufficiently intensive care provision to properly alleviate the risk.

43. Therefore, I conclude that the appellant succeeds in his appeal on Article 3 grounds.

Article 8

44. On the basis of my conclusion on Article 3, the appellant must succeed on Article 8 grounds as well.

45. Alternatively and on the basis that there was no risk of suicide, the high threshold under paragraph 276ADE(1)(vi) of the Immigration Rules is met, even with reference to the date on which the appellant made his human rights claim (that being June 2017). The evidence shows that the appellant was even at that time experiencing significant difficulties with his mental health (see, for example 149 AB and Dr Heke's 2018 report at 152-171 AB - the report indicates that the appellant's mental health problems pre-dated her assessment).

46. In the further alternative, I am satisfied that, as matters now stand, paragraph 276ADE(1)(vi) would clearly be met if a new human rights claim were made. This represents a very significant factor in my wider Article 8 assessment, which has also of course included the mandatory considerations set out in section 117B of the 2002 Act.

47. Against the appellant's Article 8 claim is the important public interest in maintaining effective immigration control, his lack of status in this country, his lack of a reasonably good standard of English and the lack of financial independence.

48. I have concluded that the factors weighing in the appellant's favour outweigh those on the respondent's side of the balance sheet. The factual matrix in a sense speaks for itself. The appellant would return to Afghanistan as a highly vulnerable individual, without appropriate support, and into what Mr Tufan accepted would be a "chaotic" environment. The appellant is highly unlikely to be considered an "insider" on return and is highly likely to be deemed an "outsider" by virtue of his mental health problems and his absence from Afghanistan for the last five years. The presence of family members (unlikely is that would be) would not in my judgment alleviate the appellant's circumstances to any significant extent.

49. A removal of the appellant to Afghanistan in consequence on the respondent's refusal of the human rights claim would be disproportionate.

50. In light of the foregoing, the appellant succeeds on Article 8 grounds as well.

Article 15(c) QD

51. In my judgment, the appellant cannot benefit from the protection offered by Article 15(c) QD. This is for the simple reason that, as matters now stand, there is no "internal armed conflict" in Afghanistan. The (current) reality of the situation is that the Taliban have proceeded to take full control of the country (it appears as though at the time of writing my decision, resistance in the Panjshir Valley has been overcome) without open conflict which is in any way ongoing. Therefore, an essential requirement of the protection offered by Article 15(c) QD simply cannot be satisfied.

52. Whether or not this situation changes, only time will tell.

The Refugee Convention issue

53. The claim to be a refugee was considered and rejected by the First-tier Tribunal. There has been no challenge to this aspect of that decision. Refugee grounds have not been pursued before me. In light of the First-tier Tribunal's decision, the way in which the appellant's case has been put to me now, and the evidence as a whole, I conclude that the appellant is not a refugee.

Anonymity

54. An anonymity direction has been in place throughout these proceedings. Although the protection issues have now fallen away, this case nonetheless concerns a very vulnerable individual with significant mental health problems, as I have set out earlier in my decision. In all the circumstances, the public interest in open justice is outweighed by the need to protect the identity of this particular appellant. Therefore, I maintain the anonymity direction.

Notice of Decision

55. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law and that decision has been set aside.

56. I re-make the decision by:

(a) Allowing the appeal on human rights grounds (Articles 3 and 8 ECHR);

(b) Dismissing the appeal on Refugee Convention grounds;

(c) Dismissing the appeal on humanitarian protection grounds.

Signed: H Norton-Taylor Date: 8 September 2021
Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT
FEE AWARD

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

Signed: H Norton-Taylor Date: 8 September 2021
Upper Tribunal Judge Norton-Taylor

ANNEX: ERROR OF LAW DECISION

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10688/2019
(V)

THE IMMIGRATION ACTS

Heard remotely by *Skype for Business* **Decision & Reasons Promulgated**

On 8 December 2020

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Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

J K
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant or members of his family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Representation:
For the appellant: Ms T Jaber Counsel, instructed by Sutovic and Hartigan
For the respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Raymond ("the judge"), promulgated on 23 January 2020, by which he dismissed the appellant's appeal against the respondent's refusal, dated 10 October 2019, of his protection and human rights claims.

2. The appellant is a national of Afghanistan, born in 1999. He came to the United Kingdom in February 2016 and claimed asylum. The claim was based on an alleged feud between his family and that of a maternal uncle who was also a commander. The feud was said to have arisen as result of the appellant having had an illicit relationship with the uncle's daughter. The claim was refused by the respondent and the subsequent appeal dismissed by the First-tier Tribunal by a decision promulgated on 16 December 2016. Suffice it to say that the judge in that appeal concluded that the appellant was not a truthful witness in respect of any aspect of his claim.

3. Further representations were then submitted to the respondent, who eventually accepted these as constituting a fresh claim. The representations essentially sought to rely on the original asylum claim, but additionally raised the issue of the appellant's poor mental health and the consequences of this in respect of any removal to Afghanistan.

The judge's decision

4. It is right to say that the judge's decision is very lengthy and not always particularly easy to follow, a fact fairly acknowledged by Mr McVeety during the course of the hearing before me. Some of the difficulties arose because the judge set out findings on the appellant's credibility in sections of his decision which ostensibly involved a recitation of the various aspects of the account; whilst then also providing further findings under the subheading "Reasons". Thus, a full comprehension of the decision involved a degree of cross-referencing. With respect, it would have been better for the judge to have left all findings of fact to the "Reasons" section of his decision. Having said that, on an appeal to the Upper Tribunal, it is important to consider a judge's decision in the round; poor structure alone will only relatively infrequently lead to a conclusion that errors of law have been committed.

5. In view of the length of the judge's decision and given that the parties will be well aware of its contents, I do not propose to set out the judge's assessment of the evidence in great detail here. The following will suffice. The judge relied on the previous decision of the First-tier Tribunal from 2016 as a starting point, in line with the well-known Devaseelan principles. He went on to robustly reject all material aspects of the appellant's account. He regarded the evidence relating to the claimed relationship with the uncle's daughter in Afghanistan and surrounding events as wholly

implausible. A second, and significant, aspect of the appellant's account which the judge rejected as being incredible related to the interrelated issues of contact with family in Afghanistan and an uncle apparently residing in the United Kingdom.

6. As to the appellant's mental health, the judge accepted that there were problems, but concluded that these did not meet the high threshold imposed by Article 3 ECHR, whether in respect of medical treatment in Afghanistan or the risk of suicide. Nor did the health issue, in isolation or combined with other factors, permit the appellant to succeed on Article 8 grounds. The judge concluded that the appellant could, in all the circumstances, return and reside in Kabul if necessary.

The grounds of appeal

7. The grounds of appeal are lengthy and in essence seek to challenge each aspect of the judge's decision outlined above. Rather than recite their contents here, I will deal with the substance when setting out my conclusions, below.

The hearing before me

8. Ms Jaber provided a helpful skeleton argument, upon which she relied in addition to the grounds of appeal. Her submissions focused on four issues. First, it was said that the judge made "glaring errors of fact" when finding that the appellant had failed to mention the presence of an uncle in the United Kingdom in his screening interview or to anyone who had had involvement with his care whilst in this country. These errors fed into numerous aspects of the judge's reasoning when finding against the appellant's credibility. Therefore, the credibility assessment as a whole was flawed. Second, it was submitted that the judge had failed to undertake any adequate assessment of the claim that the appellant would be at risk of serious harm under Article 15(c) of the Qualification Directive. Third, the judge had erred in applying the case of AS (Safety of Kabul) CG Afghanistan [2018] UKUT 00118 (IAC), as this had been overturned by the Court of Appeal in May 2019. Fourth, the judge had failed to lawfully consider the issue of suicide risk and/or the mental health problems as the related to Articles 3 and/or 8.

9. Mr McVeety opposed each of the appellant's challenges. He noted that a number of significant adverse credibility findings made by the judge had not been challenged at all. In respect of the relative in the United Kingdom, it was submitted that the judge was aware of the mention of this individual by the appellant in the screening interview. The real basis of the judge's adverse view of the appellant related to the absence of credible evidence of trying to trace the uncle in order that he could have

obtained support of one sort or another. In any event, the issue relating to the uncle was peripheral; the core of the account relating to alleged events in Afghanistan had been entirely rejected for sustainable reasons. On the Article 15(c) issue, it was submitted that the appellant had family in Kabul and even on the latest country guidance, the appellant would be unable to succeed. On the suicide issue/mental health issue, Mr McVeety acknowledged that what the judge said in paragraph 93 was to an extent problematic, but overall he had dealt with this matter adequately.

10. Ms Jaber responded to a number of points raised by Mr McVeety. In particular, she submitted that all aspects of the judge's credibility findings had in fact been challenged, with reference to ground 5 of the grounds of appeal.

Decision on error of law

11. After much thought, I have concluded that the judge has not materially erred in law in respect of his assessment of the appellant's credibility. However, I have also concluded that there are material errors of law relating to the failure to adequately address the Article 15(c) issue together with the risk of suicide and Article 3 and Article 8 ECHR in general, with particular reference to the appellant's mental health.

12. I begin with the credibility issue. The judge was plainly entitled to rely on the 2016 First-tier Tribunal decision, which was significantly adverse to the appellant. Clearly, that was not of itself fatal to the outcome of the appellant's appeal before him, but it nonetheless represented a fairly robust starting point.

13. In my judgment, it is incorrect to assert that the judge committed a "glaring" error of fact in respect of the appellant's screening interview, with the effect that it undermined everything that followed. In fact, the judge repeatedly mentioned the appellant's reference at that stage to an uncle apparently residing in the United Kingdom (see, for example, paragraphs 30, 31, and 40). The judge was correct to state that the appellant had not mentioned the existence of this individual in other relevant evidence, such as the substantive asylum interview.

14. I do accept that it appears as though a social worker who had previously assisted the appellant, Ms Laura Moore, had been told about this uncle and that the judge seemingly overlooked this when stating that no one involved with the appellant's care had been made aware of this individual. However, this must be put in the context of what the judge was actually relying on when setting out his adverse findings. The point he makes on numerous occasions throughout the decision is not simply that the appellant was seeking to conceal the very existence of the uncle from everybody, but that he had failed to provide reliable evidence on the issue of attempts to trace this individual, or at least assist others in so doing

(see, for example, paragraphs 32, 34, 35, 36, 39 40, 76). The judge was also entitled to rely on the fact that the appellant had not informed a wider variety of people with whom he was having contact in this country (leaving aside Ms Moore) in order to make reasonable attempts to track down the uncle (see paragraphs 37-40). Further, the judge was entitled to rely on the absence of any evidence from the British Red Cross itself. In summary, the judge's oversight in respect of one particular aspect of the evidence did not, contrary to Ms Jaber's submission, infect all aspects of the credibility assessment, whether in respect of the United Kingdom-based uncle or more generally.

15. As to the point concerning Dr Vince's report and paragraphs 66 and 67 of the judge's decision, I agree with Mr McVeety's submission. If, as appears to be the case, Mr Perkins in fact provided the expert with an account on the appellant's behalf, the judge was entitled to infer that this would have been based upon what the appellant had told Mr Perkins. Indeed, it would have appeared odd, to say the least, if the expert had taken the view that Mr Perkins was speculating on or concocting a history.

16. It is also significant that numerous and significant highly adverse findings reached by the judge had not been specifically challenged. These findings relate to the central aspect of the appellant's claim, namely events alleged to have taken place in Afghanistan. In this regard, there is merit in Mr McVeety's submission that much of what is said about the uncle in the United Kingdom was in reality peripheral.

17. Ms Jaber has relied on ground 5 and the submission that the credibility findings as a whole have indeed been challenged. However, that overarching challenge is predicated on the appellant's age and status as a vulnerable witness. In respect of the former, he was of course an adult at the time of the hearing before the judge. Further, his young age at the time of the claimed events in Afghanistan was taken into account by the First-tier Tribunal in 2016. That formed part of the application of the Devaseelan principles, in respect of which I see no error. As to the vulnerability of the appellant, the judge made it very clear in his decision that he was treating the appellant as a vulnerable witness. In addition, it is clear that the judge had regard to the medical evidence before him, which formed the basis of the appellant's vulnerability. Considering the decision as a whole, I reject the challenge that the entirety of the judge's findings are flawed as result of him failing to treat the appellant's evidence in the context of age as regards past events and vulnerability in respect of the hearing itself.

18. In light of the above, there are no errors in respect of the judge's overall assessment of the appellant's credibility as that relates to the issues of past events in Afghanistan and family contact and potential support available in that country upon return.

19. As indicated earlier, I do however conclude that the judge has erred in other respects. Put briefly, he failed to undertake an adequate

assessment of the Article 15(c) claim, which I accept was put to him in clear terms. This error is tied in with another, namely the reliance on AS, which had by then been overturned by the Court of Appeal. These two failures are further connected to what I conclude to be an inadequate assessment of the consequences for the appellant's accepted mental health conditions were he to be returned to Afghanistan, both in respect of risk of suicide (Article 3) and Article 8 (whether in respect of paragraph 276ADE(1)(vi) of the Immigration Rules or otherwise). On the suicide issue, and with reference to paragraph 93 of the decision, the judge erred in his assessment of the guidance set out in J [2005] EWCA Civ 629 by apparently introducing a need to show that the individual concerned had been subjected to "inhumane treatment" in order to succeed on this basis. That is incorrect.

20. I regard the errors set out in the preceding paragraph as material. Therefore, I set aside the judge's decision, but only in respect of those errors.

Disposal

21. I see no good reason to remit this appeal to the First-tier Tribunal. It can be retained in the Upper Tribunal for a resumed hearing in due course. The relevant findings of fact preserved from the judge's decision are:

a) that there was never an illicit relationship between the appellant and his cousin;

b) neither the appellant nor his family faced any difficulties from an uncle or anyone else in Afghanistan;

c) that the appellant has family and friends residing in Afghanistan with whom he either actually has maintained contact or could reasonably re-establish such contact;

d) that the appellant does suffer from mental health conditions and has received treatment for these in the United Kingdom;

e) that the appellant's home area in Afghanistan is Kapisa Province.

22. The following issues can then be addressed:

a) whether the appellant's removal to Afghanistan would expose him to a real risk of suicide;

b) whether he would be able to access appropriate treatment for his mental health conditions in Afghanistan;

c) whether he could return to reside in his home area or, if necessary, relocate to Kabul without facing a risk under Article 15(c) or it being unduly harsh to do so;

d) whether it would be a breach of Article 8 for him to return to Afghanistan, with reference to paragraph 276ADE(1)(vi) of the Rules or proportionality more generally.

23. It may be that further documentary evidence will assist in this exercise. Whilst I am currently unconvinced, it may also be appropriate to hear further evidence from the appellant himself (although, if this were to take place, it would have to be in the context of my conclusions in this error of law decision). In order to progress matters, I issue directions to the parties, below.

Anonymity

24. For some reason, the First-tier Tribunal declined to make an anonymity direction. I conclude that such a direction should now be made, given the appellant's vulnerability and status as a person who has made a protection claim.

Notice of Decision

25. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law in respect of the matters set out at paragraph 19 of this decision.

26. In accordance with the above, I set aside the decision of the First-tier Tribunal.

27. I adjourn this appeal for the decision to be re-made by the Upper Tribunal.

Directions to the parties

1) **No later than 14 days after** this decision is sent out, the appellant is to file and serve representations addressing the following matters:

a) whether it is intended to adduce further documentary evidence, and if it is, the nature of such evidence;

b) whether it is intended to call further live evidence from the appellant or any other individual, and if it is, why this is deemed necessary;

c) Whether the resumed hearing should be conducted remotely or on a face-to-face basis;

d) Whether an interpreter will be required for the resumed hearing, and if it is, the language/dialect;

2) **No later than 21 days after** this decision is sent out, the respondent is to file and serve a response, with particular reference to the method of the resumed hearing;

3) **No later than 14 days before** the resumed hearing, the appellant is to file and serve in electronic and physical form a skeleton argument **and** a consolidated bundle of all evidence relied on;

4) **No later than 7 days before** the resumed hearing, the respondent is to file and serve in electronic and physical form a skeleton argument;

5) With liberty to apply.

Documents and submissions filed in response to these directions may be sent by, or attached to, an email to [email] using the Tribunal's reference number (found at the top of these directions) as the subject line. Attachments must not exceed 15 MB. This address is not generally available for the filing of documents.

Service on the Secretary of State may be to [email] and to the original appellant, in the absence of any contrary instruction, by use of any address apparent from the service of these directions.

Signed: H Norton-Taylor Date: 15 January 2021

Upper Tribunal Judge Norton-Taylor