



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: PA/11922/2019
(V)

THE IMMIGRATION ACTS

Heard at Field House via Skype

On 2nd February 2021

Decision & Reasons

Promulgated

On 23rd February 2021

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

FD

(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr M Diwnycz, Senior Home Office Presenting Officer

For the Respondent: Mr M Fazli, of Counsel, instructed by Cassidy's Solicitors

Interpretation:

Mr Ghorani in the Dari Language

DECISION AND REASONS

Introduction

1. The claimant is a citizen of Afghanistan born in 1996. She came to the UK in October 2017 and claimed asylum in the same month. The claim was refused on 4th May 2018. She appealed and her appeal was dismissed on all grounds by First-tier Tribunal Judge Shore on 28th July 2018. She made further representations to the Secretary of State on 21st June 2019, and these were refused in a decision of the Secretary of State dated 22nd November 2019 which nevertheless accepted that she had made a valid fresh claim and therefore that she was entitled to a second appeal. The claimant lodged her appeal, which was allowed on asylum grounds, under Article 15(c) of the Qualification Directive and on Article 8 ECHR grounds but dismissed under Article 3 ECHR in a decision of First-tier Tribunal Judge Mill promulgated on 19th February 2020.
2. Permission to appeal was granted and I found that the First-tier Tribunal had erred in law for the reasons set out in my decision appended to this decision as Annex A. I substituted a decision dismissing the asylum appeal, and preserved the findings at paragraphs 32 to 36 of the decision of the First-tier Tribunal which I found lead to the dismissal of the asylum claim based on a claimed risk of an honour killing/ forced marriage which were said to come from the Taliban, her father and brother. I also preserve the findings about the claimant's mental health problems at paragraphs 18 to 26 and the new documentation, at paragraphs 27 to 31, to which no challenge was made. This remaking hearing is therefore solely concerned with the humanitarian protection and human rights appeals.
3. The hearing was held at a remote Skype for Business hearing in light of the need to reduce the transmission of the Covid-19 virus, and in light of this being found to be acceptable by both parties, and being a means by which the appeal could be fairly and justly determined. There were no significant issues of connectivity or audibility with the hearing.
4. The claimant is a vulnerable adult as there is credible psychiatric evidence that she has a diagnosis of schizoaffective disorder (a diagnosis that has symptoms of both schizophrenia and depression) and it is noted that she takes anti-psychotic and anti-depressant medication. The hearing was conducted so as to ensure that she felt as comfortable as possible with the proceedings. Mr Fazli asked that the claimant be given appropriate breaks when needed, and Mr Diwnycz reminded the claimant of this possibility prior to cross-examination and she asked for, and was given, a ten minute break at that stage as she said she felt a bit dizzy. She confirmed that she was feeling better at the start of the cross-examination. The claimant was reminded by me that she

should alert me if she needed anything; and I explained that if she did not understand any question she should say so and it would be rephrased, and that she was entitled to say that she did not know the answer to any question if that was the truth.

5. The claimant confirmed that she understood the interpreter, although it was noted by Mr Fazli that he was a Dari speaker from Iran rather than Afghanistan. Mr Fazli confirmed that he is a Dari speaker of Afghan origin, but he did not alert me to any misunderstandings on the claimant's part due to the interpreter's origins despite my indicating that he should do this if he felt that this was a problem.

Evidence & Submissions - Remaking

6. The evidence of the claimant from her statement of 10th January 2020 and oral evidence to the Upper Tribunal on the issues of her health and situation if returned to Afghanistan is in summary as follows.
7. The claimant would prefer to stay in the UK because she believes that she gets better medical care and people are less judgmental in the UK than in Afghanistan. She says that her mental health problems mean that she suffers from insomnia, and is very suspicious of people which makes it difficult to go out and see and talk to people. She feels that her diagnosis and medication after her period in hospital in 2018 have helped her feel a bit better. She continues to receive medication in the UK (she said currently she takes just two types of medication quetiapine and senna). She said that she did not like the group talking therapy that she was referred to by her GP at the Waterloo Centre, so stopped attending as she did not like the idea that people in her community might know about her issues. She remembered that she had thoughts about hurting herself in January 2020 but did not act upon those thoughts. She had those thoughts because she was afraid of return to Afghanistan. She last spoke to her GP during lockdown, about 7 or 8 months ago, about changing her medication dosage.
8. She is afraid that her mental health might be getting worse, and wishes to stay in the UK with the family she has here who support her and keep her safe. She believes that she will commit suicide if she is removed to Afghanistan as she feels she would have no one to protect her in Afghanistan. She says that the mental health treatment facilities in Afghanistan are very poor and would not give her proper help. She believes that if returned to Afghanistan she would be a lone woman living without any family to protect her. She could not live in Kabul because of the problems she has in Afghanistan. She cannot live with her family as they did not keep her as part of the family or she would not have ended up in the UK. She does not know where she would live if she were returned to

Afghanistan. She was not certain if there were family homes in the two places she had lived in Afghanistan prior to coming to the UK in the Balkh district, but she thought there had been prior to her mother's death. She thought her mother had lived separately from her father and brothers prior to her death, and had a maternal uncle who helped her.

9. The claimant has produced a death certificate for her mother, MD, with a translation, who is said to have died of heart disease and Covid-19 on 11th June 2020 in the district of Balkh, in a town 20km from the provincial capital of Mazar-e Sharif. She says a friend called Susan helped her obtain this certificate from Afghanistan by contacting the hospital where her mother died, and that this had taken place around 24th January 2021 when she had received the letter from the Tribunal about the hearing date. It seems that her cousin's family had known about her mother's death for some time but had kept the news from her until then. The death certificate was sent to her as an attachment via WhatsApp. She said she had not had contact with her mother for a long time prior to her death in June 2020. It was put to her by Mr Diwnycz that different ages for her mother appeared in the psychiatric report of Dr Singh and on the death certificate, so she would have either been 50 (as per the Dr Singh report) or 60 (as per the death certificate) when she died. The claimant said she did not know how old her mother was, or which was correct, and she had given approximate ages for her parents to the doctor.
10. Throughout the evidence the claimant was unable to give dates as she said she could not remember them.
11. An updating psychiatric report is provided from Dr Latifi, a consultant forensic psychiatrist, who has interviewed the appellant remotely in Dari. I find Dr Latifi is an appropriate expert to provide a psychiatric report, and that he has complied with the requirements of Tribunal and confirmed his duty to the court. He is also an Afghan citizen, and has made recent trips to Afghanistan so is able to comment on the provision for those with mental health problems in Afghanistan from his own observation as well as the country of origin materials. His conclusions, in short summary, are that most mentally ill patients are cared for by their families in Afghanistan as the psychiatric and mental health services are very limited and inadequate. He confirms the claimant's diagnosis of schizoaffective disorder, and finds that the claimant's present risk of self-harm is low to moderate, with her currently reporting fleeting suicidal thoughts but denying any current plan or intent to harm herself or others.
12. Mr Diwnycz relied upon the reasons for refusal letter of 22nd November 2019 and made oral submissions. It is argued for the Secretary of State, in summary, as follows. It is argued that the

country guidance cases and country of origin materials show that there is no Article 15(c) risk for the claimant as a returnee to Afghanistan. It is submitted that the situation in the claimant's home province of Balkh/ Mazar-e-Sharif is stable. The claimant is educated and has family so she can return safely to her home in that district and live with them. She could also obtain a grant through the assisted voluntary return programme if she returned voluntarily to Afghanistan. It is not considered that country conditions would make it a breach of Articles 2 or 3 ECHR to return to Afghanistan.

13. It is also not considered to be the case that return to Afghanistan would be a breach of Article 3 ECHR due to the claimant's mental health problems. There is country of origin material, and in particular the CPIN Medical Issues Afghanistan published in November 2020, that shows that there is both public (free care funded by a German charity) and private psychiatric hospital (in and out-patient) care in Kabul, and medication to treat schizophrenia and depression. CBT is also available in Kabul if needed. It is also considered relevant that the claimant will have family support for her mental health problems. It was submitted that I should be wary of finding the death certificate a reliable document, particularly as it had not been provided to the Secretary of State in advance of the hearing. The age of the claimant's mother differed significantly from that the claimant had given to Dr Singh, and the claimant was unable to explain the difference, although Mr Diwnycz accepted that her mental health problems may be relevant to this inability. It is not accepted that return to Afghanistan will lead to the claimant's death or to suffering due to her health problems.
14. Mr Diwnycz noted the country guidance case DH (Particular Social Group: Mental Health) Afghanistan [2020] UKUT 223, but argued that the factual scenario in that case was very different and here there was nothing that would bring this claimant to the attention of potential persecutors as a result of her mental health condition so as to result in her having a well founded fear of persecution.
15. Mr Fazli submitted for the claimant that she should not be returned to Afghanistan in light of her mental health problems, as this would cause her to be at suicide risk and lead to her psychological deterioration, and thus be a breach of Article 3 ECHR. He submitted that the psychiatric evidence shows that the claimant suffers from schizophrenia, PTSD, depression, auditory hallucinations, self-harm and suicidal ideation. He relied upon the reports of Dr Singh and Dr Latifi, who has experience of the state of mental health care in Afghanistan. I raised with Mr Fazli the fact that Dr Latifi had not been told the starting point of this hearing would be that the claimant's history of persecution from the Taliban/ her male family members was not believed, so this meant

his report did not address the fact that I would be starting from the position that the claimant had potentially supportive family in Afghanistan. Mr Fazli did not disagree that this was the position. I also asked Mr Fazli to take me to any element of Dr Latifi's report which stated that the claimant could not get GP type services and her current medication, or the modified medication Dr Latifi recommended if she were returned to Afghanistan. Mr Fazli accepted that there was nothing in the report about these matters.

16. Mr Fazli submitted that the claimant's return would also be a breach of Article 8 ECHR because she would have very significant obstacles to integration on return to Afghanistan as a woman with mental health problems, and in the context of the lack of support if her mental health deteriorated. It would be very hard for the claimant to start afresh in Afghanistan given her mental health frailties. This was a case where there were exceptional circumstances, and thus where the appeal should be allowed on this basis if not under Article 3 ECHR.
17. At the end of the hearing I reserved my determination.

Conclusions - Remaking

18. This is a second appeal and so the starting point would normally be the previous decision of First-tier Tribunal Judge Shore. Judge Shore did not find that the claimant's claim to be at real risk of serious harm in Afghanistan from the Taliban and her conservative family, for promoting women's rights, or that she was at risk of a forced marriage, was credible, and I have preserved the findings of the second First-tier Tribunal that her protection claim on this basis did not succeed in light of the new evidence she produced.
19. The parties did not make submissions before me in relation to the humanitarian protection appeal, however it is to be determined by reference to paragraph 339C of the Immigration Rules which in turn makes reference to The Refugee or Person in Need of International (Qualification) Regulations 2006. I must consider whether the claimant could safely live in her home district of Balkh which is, according to the country of origin materials, one of the safer areas of Afghanistan. The test is one of whether it is shown that there is a serious and individual threat to a civilian's life by reason of indiscriminate violence or internal armed conflict. I find there is no evidence before me of such a risk in this area. Further Afghan country guidance in AK (Article 15(c)) [2012] UKUT 163 at para 245 found it was not made out that there was an Article 15(c) risk travelling from Kabul to other major towns in Afghanistan. As such I find that there is no evidence that for the claimant there is a qualifying risk from indiscriminate violence or internal armed conflict if she is returned to Afghanistan entitling her to humanitarian protection.

20. There was no medical evidence before the first First-tier Tribunal Judge, Judge Shore, so the Article 3 ECHR “medical” claim is to be determined on the evidence before the second First-tier Tribunal, the findings from which I have preserved. In short summary the accepted medical evidence is that she has a history of mental health problems which appears to start in 2011 when she tried to cut her throat, leaving her with scars, when she would have been 15 years old. In 2013 she was diagnosed as suffering from schizophrenia, and whilst living in Afghanistan, and she was sent for treatment in India. She was admitted to hospital in Greece due to mental illness on route to the UK in 2017. Her significant active medical problems according to her GP are hypothyroidism and schizophrenia. She was detained in a psychiatric in-patient unit between January 2018 and February 2018 and diagnosed as having schizoaffective disorder, depressed type, and was started on antipsychotic medication and anti-depressant medication. A preserved finding from the First-tier Tribunal is that the nature of her illness means that she is sometimes delusional, and has provided delusional evidence to her GP, for instance concerning being married and having children. From the most recent psychiatric report of Dr Latifi it is clear that the impact of her illness is that the claimant suffers from insomnia, feels paranoid and cannot trust people and therefore prefers to be alone. She reports that the medication stops her hearing voices however, and that she is willing to take that medication.
21. The reports of the two consultant psychiatrists, Dr Singh (dated 22nd January 2020) and Dr Latifi (dated 29th January 2021), confirm that the appellant continues to suffer from schizoaffective disorder, and so she has depressive symptoms including suicidal thoughts. In his report of 22nd January 2020 Dr Singh records that at that time the claimant did not however harbour any intent or plan to end her life, although she had often thought about ending it. Dr Singh’s view is that if the claimant were to be suffering a period of psychological distress or severe depression at the prospect of her having to return to Afghanistan then the risk of suicide and significant self-harm is likely to increase. The preserved finding of the First-tier Tribunal is that there is however no real risk of suicide if the claimant is returned to Afghanistan as a result of her mental health diagnosis. The evidence from the report of Dr Latifi with respect to the issue of self-harm is not materially different from that of Dr Singh. The claimant tells Dr Latifi that although her mother has now passed away that her relationships with her cousins are protective factors against her taking her on life. Dr Latifi concludes that the claimant’s present risk of self-harm is low to moderate, with her currently reporting fleeting suicidal thoughts but denying any current plan or intent to harm herself or others. Considering all of the evidence before me I find no reason to depart from the finding of the First-tier Tribunal,

that there is no real risk of the claimant attempting suicide or self-harming if the claimant is removed to Afghanistan.

22. It is undoubtedly the case, and documented in some detail by Dr Latifi in his report, that the mental health services of Afghanistan are generally extremely poor and provide inadequately for those with such ill-health. However, there is no evidence before me that the claimant requires, or is likely within a reasonable period of time to require, in-patient care. She has had her schizophrenia diagnosis since 2013, and since her period of in-patient care in the UK in 2018 has been prescribed appropriate medication for schizoaffective disorder. She does not wish to have cognitive behavioural therapy in a group, and there is no evidence before me that she wants or needs to have any talking therapies. She is currently supported by her GP who is able to monitor and fine tune her medication. There is no evidence before me that the claimant cannot access GP type services and the anti-psychotic and anti-depressant medication, or equivalent medication to that which she currently takes, to manage her mental health condition in Afghanistan. I do not find therefore, on the evidence before me, that the claimant would be at real risk of serious harm as a result of not receiving the medical care in terms of medication and/or the support with that medication that she requires.
23. Mr Diwnycz has drawn my attention to the country guidance case DH (Particular Social Group: Mental Health) Afghanistan but as he has argued the manifestation of this claimant's mental health condition is not such, on the evidence before me, that it would lead her to come into conflict with cultural norms in Afghanistan and thus put her in danger of a real risk of serious harm for reason of her diagnosis. The evidence that she gave before me was that her mental health meant that she did not like to mix with people as she became worried about them (which also reflects what she said to Dr Latifi). I have preserved from the First-tier Tribunal a conclusion that sometimes she may misrepresent facts, for instance saying she was married with children when she is not, however there is no evidence that as a result of her mental health diagnosis that she would do anything potentially provocative such as behave in a sexual disinhibited fashion, or remove her clothing, or abuse drugs or alcohol, and indeed in respect to this last matter it is recorded in the report of Dr Latifi that she does not use illegal drugs or alcohol. So, although if it were known to others outside her family that the claimant had mental health problems she might suffer discrimination or a lack of appropriate understanding I do not find this would amount a real risk of serious harm.
24. I now turn to the issue of family support, which clearly this claimant would be very likely to require, given her vulnerable mental health, if returned to Afghanistan. It is a preserved finding from the First-tier Tribunal that the claimant's family pose her no

threat, and it is recorded in the report of Dr Singh that in the past they have sent her for mental health treatment to India.

25. In the report of Dr Singh the claimant is recorded as saying that she sometimes spoke to her mother, and that it was her mother and maternal uncle who arranged her journey from Afghanistan to the UK. Before me she gave evidence that she had not been in touch with her mother for a long time, and that her UK relatives had seemingly hidden her mother's death from her until very recently. She said that her mother had lived with a maternal uncle separately from her father. The claimant has produced a death certificate for her mother in a bundle of documents submitted on 1st February 2021, the day before this hearing. As Mr Diwnycz has submitted the original of this document is not available to us. It is sadly possible that the claimant's mother has died of a combination of Covid-19 and heart problems, however her age as recorded on the document differs significantly from that given to Dr Singh by the claimant. Dr Singh records that the claimant told him her mother was 50 years old in January 2020, whereas the death certificate records that she was 60 years old in June 2020. It is the case that the claimant was unable in oral evidence before me to give evidence on dates and time in all contexts however, and that Dr Singh also found her to be a poor historian, and concluded that poverty of speech is one of the symptoms of schizo-affective disorder. I note that the claimant told Dr Latifi that her mother had died when she saw him in January 2021 for the appointment prior to his preparation of the psychiatric report, when explaining that she had been a protective factor against taking her own life in the past. I note that the claimant says that the death certificate was sent to her via WhatsApp by a friend called Susan. I note that in her witness statement she explains that this person is an ex-class mate from university who also sent the certificate about her voluntary work and university studies in Afghanistan. These documents have been found, on the lower civil standard of proof to be genuine. Ultimately when weighing all the evidence I find that the death certificate of the claimant's mother should also be given some weight, and when considering all of the evidence find that the claimant's mother sadly passed away in June 2020.
26. It remains the case however that the claimant has given evidence of having a father, two brothers and a maternal uncle in Afghanistan, and that there is no evidence that any of these people would not assist her by providing her with a home and support. She is provided with accommodation and support (and helped with medical matters as recorded in the GP notes) in the UK by her second cousin, a British citizen, Ms NO, who gave evidence before the First-tier Tribunal in June 2018, but not before the First-tier Tribunal in February 2020 or before me. In June 2018 NO's mother was also said to be living in Afghanistan. Although

there was no mention of whether NO's mother remains there before me I find that other extended family, including female family, are present in Afghanistan at the current time.

27. I find that it is open to the claimant to return to live with her father and siblings in the Balkh district of Afghanistan where they reside, as they have been found to pose no threat to her in the preserved findings of the First-tier Tribunal with respect to her protection claim, or in the alternative to live with other extended family such as her maternal uncle who lives in the same district, or with the family of Ms NO, who has supported her in all ways in the UK, or possibly with her university friend Susan, with whom she clearly still has contact, and her family. As such I find that there is no Article 3 ECHR risk of serious harm arising from the claimant's mental health problems or from a lack of necessary family support as a result of the vulnerabilities her mental health problems give her.
28. I finally turn to the issue of Article 8 ECHR, firstly by reference to the Article 8 ECHR Immigration Rules at paragraph 276ADE(1)(vi). The claimant suffers from a serious mental health condition and in whichever country she lives this will limit her private life and ability to integrate within society. However, I find that the claimant will not be more seriously prejudiced in her ability to integrate by being in Afghanistan rather than in the UK. In Afghanistan she has the ability to communicate fluently in one of the national languages, and extended family and old friends, the lack of which makes integration more difficult in the UK. In the UK she may however encounter more sympathy and understanding for her mental health condition in the wider public. There is no evidence, as recorded above, before me that she will not be able to obtain the medication and medical supervision of that medication she requires in Afghanistan. The claimant is a relatively well-educated woman. I have preserved the findings that she studied for the first three semesters of a medical degree at Aria University in the Faculty of Medicine) and has done some volunteer work distributed leaflets to Afghan women about contraception, birth control and sexual health. She may be able to do similar work in the future. She has family and friends in Afghanistan, and I have found there is no evidence that they will not be willing to provide accommodation and support her if she is not able to earn sufficiently to provide these things for herself. Further her family in Afghanistan have shown an ability to accept and understand her condition as a medical one by sending her for treatment abroad to India in the past, and have relations in the UK who have been supporting her directly, taking her into their family home. On the totality of evidence before me I do not find that the claimant would have very significant obstacles to integration on return to Afghanistan.

29. I also do not find that her removal to Afghanistan would be a disproportionate interference with her right to respect for private life under Article 8 ECHR. All of the claimant's residence in the UK has been unlawful and so her private life ties in the UK, including those with her cousin, can only be given little weight applying s.117B(4) of the Nationality, Immigration and Asylum Act 2002. I find that there is nothing else that weighs against her removal beyond the fact of general levels of discrimination against those with mental health conditions in Afghanistan. When all the circumstances of this case (particularly the lack of evidence that her family will not support her family and her mental health needs will not be met) are considered I find that the public interest in the removal of the claimant as a person who does not qualify to remain either in accordance with the UK's international obligations or the Immigration Rules makes her removal to Afghanistan a proportionate interference with her Article 8 ECHR ties to the UK .

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal allowing the appeal on humanitarian protection and human rights grounds, and substitute a decision dismissing the asylum appeal.
3. I remake the appeal by dismissing it on asylum, humanitarian protection and human rights grounds.

Signed: Fiona Lindsley
Upper Tribunal Judge Lindsley

Date: 9th February 2021

Annex A: Error of Law Decision

DECISION AND REASONS

Introduction

1. The claimant is a citizen of Afghanistan born in 1996. She came to the UK in October 2017, and claimed asylum in the same month. The claim was refused on 4th May 2018. She appealed and her appeal was dismissed on all grounds by First-tier Tribunal Judge Shore on 28th July 2018. She made further representations to the Secretary of State on 21st June 2019, and these were refused in a decision of the respondent dated 22nd November 2019 which nevertheless accepted that she had made a valid fresh claim and therefore was entitled to a second appeal. The claimant lodged her appeal, which was oddly allowed on asylum grounds, under Article 15(c) of the Qualification Directive and on Article 8 ECHR grounds but dismissed under Article 3 ECHR in a decision of First-tier Tribunal Judge Mill promulgated on 19th February 2020.
2. Permission to appeal was granted on all grounds to the Secretary of State by First-tier Tribunal Judge Foudy on the 11th May 2020 on the basis that it was arguable that the appeal had been allowed on two mutually exclusive grounds (asylum and humanitarian protection) and whilst this might be a slip it is arguably unclear from the decision whether there are findings on asylum grounds as opposed to simply on humanitarian protection grounds. It is also found to be arguable that there were no proper reasons given for the finding of risk on return to Afghanistan.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law. The hearing was held at a remote Skype for Business hearing in light of the need to reduce the transmission of the Covid-19 virus, and in light of this being found to be acceptable by both parties, and being a means by which the appeal could be fairly and justly determined. There were no significant issues of connectivity or audibility with the hearing, although Ms Isherwood lost use of her camera part way through the hearing but confirmed that she was happy to proceed without the video element as her audio was still working.
4. At the start of the hearing I asked Mr Fazli whether he accepted that there was an error in allowing the appeal on asylum and humanitarian protection grounds. It was agreed by both parties that the Notice of Decision ought to have read the asylum appeal is dismissed; the humanitarian protection appeal is allowed and the human rights appeal is allowed as this would be consistent with the reasons sections of the decision.

Submissions – Error of Law

5. In grounds of appeal and in oral submissions from Ms Isherwood it is argued for the Secretary of State, in summary, as follows.
6. It is argued that the First-tier Tribunal errs in law in allowing the appeal on asylum and humanitarian protection grounds which is clearly a legal error as they are mutually exclusive outcomes. Further there are no findings to show that the Refugee Convention claim is well found, particularly there is no Convention reason which justifies this grant. It is argued that it was a slip of the pen to allow the appeal on this basis, particularly as from the body of the decision at paragraphs 40-53 it is clear that the First-tier Tribunal Judge did intend to allow the matter on humanitarian protection grounds, and these are mutually exclusive outcomes.
7. Ms Isherwood submitted that the starting point should be that in determining the asylum appeal the claimant had been found not to be a party to a forced marriage; not to be at risk from the Taliban; not to be at risk from her father and brothers; and not to have been prevented from going into education by her family. It was therefore unclear why the First-tier Tribunal had treated the claimant as a lone woman when determining the humanitarian protection and human rights appeals when she had a family in Afghanistan. In this context it is argued that the First-tier Tribunal secondly erred in law by failing to provide adequate reasons for allowing the appeal on humanitarian protection grounds. It is argued that the First-tier Tribunal found negative societal attitudes and discrimination against those with mental health problems wrongly to be of a level which amounted to persecution at paragraphs 37 -39 of the decision. The findings in this section that the claimant's mental health would decline are entirely speculative. There is also a failure to consider that she has managed to travel to the UK, and had been independent and studied at university in Afghanistan.
8. Thirdly, it is argued that the First-tier Tribunal erred in law by finding that the claimant cannot relocate to Kabul, and so is at Article 15(c) risk on return. There is no reasoning as to why she cannot go to her family in her home in Mazar-e Sharif. It was not sufficient to find that the country guidance case of AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 had been remitted to the Upper Tribunal to be remade due to an error. The claimant would be able to return to her family so she is not an IDP, as is implied at one point, and she is educated, has lived previously with mental health problems in Afghanistan since her diagnosis in 2013, and has been independent so it would not be unduly harsh for her relocate to Kabul in any case.

9. Fourthly, it is argued that the First-tier Tribunal erred in law by allowing the appeal on Article 8 ECHR grounds because there is insufficient evidence to show she could meet the asylum/humanitarian evidential thresholds and this test would require a higher standard of proof, namely the balance of probabilities. Again, the wrong facts have been applied as she would not be returning to Afghanistan as a lone woman, but would have family, and has previously been independent and shown personal fortitude by travelling alone to the UK. She would clearly be able to reintegrate into her country of birth and culture, and the reasoning set out in the decision is wholly inadequate. Whilst it is accepted that she has mental health problems there is no reasoning or evidence showing that she would not be able to obtain the treatment she needs in her country of origin.
10. Mr Fazli argues that it is rightly found at paragraph 16 of the decision those with mental health problems can properly be seen as a social group in Afghanistan as there is country of origin evidence that persons with mental health disabilities are subject to ill treatment or discrimination. He argued that it was therefore proper to find that the claimant would suffer discrimination and victimisation if returned to Afghanistan on account of her accepted mental health diagnosis, particularly as it is found she suffers from schizoaffective disorder and needs antipsychotic and anti-depressive drugs, as set out at paragraph 19 of the decision, and at paragraph 38 of the decision that she would not gain access to treatment in Afghanistan without the assistance of her cousin. Mr Fazli submitted that it had been properly found that Kabul and the claimant's home area were not safe, and that she would have very significant obstacles to integration. Mr Fazli was unable to identify for me where the First-tier Tribunal reasoned why the claimant could not return to her family in Mazar-e-Sharif and why she could not get care and medical treatment in Afghanistan however.

Conclusions - Error of Law

11. The First-tier Tribunal sets out the correct tests for allowing the appeal in relation to asylum and humanitarian protection at paragraphs 4 and 5 at the start of the decision. It has been agreed, as set out above, that the decision section of the determination contained errors and that to be consistent with the body of the decision it should have read: appeal dismissed on asylum grounds; appeal allowed on humanitarian protection grounds and human rights grounds.
12. It is noted that the claimant is a vulnerable adult as there is an independent psychiatric report giving a diagnosis of schizoaffective disorder (a finding that has symptoms of both schizophrenia and depression) and it is noted that she takes anti-psychotic and anti-depressant medication. The First-tier Tribunal

undertakes a careful analysis of the medical evidence and concludes that there is no real risk of suicide, and finds that her mental health has had a historic impact on her ability to give evidence in written and oral forms for her asylum claim, although it was found she was well enough to participate in the hearing, as set out at paragraph 26 of the decision.

13. This is a second appeal and so the starting point is the previous decision of First-tier Tribunal Judge Shore. Judge Shore did not find that the claimant's claim to be at real risk of serious harm in Afghanistan from the Taliban and her conservative family, for promoting women's rights, or that she was at risk of a forced marriage, was credible. Her new claim introduces more evidence about her mental health showing that she is psychotic and delusional; and documentary evidence about her studies and witness evidence from Afghanistan.
14. The First-tier Tribunal reaches conclusions, set out at paragraphs 32 to 36 of the decision, that were unarguably open to it and properly reasoned that the claimant's claims to be at real risk of serious harm or honour killing from her father and brother, who were said by the claimant to be religious fanatics, and the Taliban and to be at real risk of a forced marriage were not made out to the lower civil standard of proof. I find that this is the disposal of the asylum appeal, and the Secretary of State has rightly argued that it was an error of law, possibly by way of a slip of the pen, to allow the appeal on asylum grounds, and find that this error should be corrected by changing the decision so that the appeal on asylum grounds is dismissed.
15. The First-tier Tribunal then turns to the determination of the humanitarian protection appeal by reference to Article 15(c) of the Qualification Directive. It is firstly considered whether she could return to her home area of Mazar-e Sharif, which is found to be a large city and one of the safer areas of Afghanistan. It is found at paragraph 39 of the decision that the claimant would be highly vulnerable because she is suffering from long-term psychotic mental illness which means that she misrepresents facts, and that she would not be able to work (it having been found that her previous work history was as a volunteer in a leaflet programme - paragraph 36 of the decision). It is found that she would be able to find support from her mother in Mazar-e Sharif on return to Afghanistan, but as she would be returned to Kabul there would be no safe route for her to travel to her home area, and so she would be unable to arrange travel to her mother, particularly as her mental health would be likely to be decline rapidly without treatment. I find this reasoning to be unlawfully insufficient. There is no reasoning as to why she is not returning to her whole family, as her father and brothers have been found not to pose any threat to her. There is no reasoning as to why her family could not assist

her in returning to Mazar-e Sharif from Kabul, or as to why it would be unsafe for her to travel from Kabul to Mazar-e Sharif, or why she would be without treatment in the form of medication for her mental health problems at this stage. The Afghan country guidance of AK (Article 15(c)) [2012] UKUT 163 at para 245 found it was not made out that there was Article 15(c) risk travelling.

16. The First-tier Tribunal then considered whether the claimant would be able to live in Kabul. Consideration is given to the state of the country guidance on the safety of Kabul (at that point remitted by the Court of Appeal for remaking), and the EASO report of June 2019 and the UNHRC Guidelines of August 2018, and the respondent's CPIN of July 2019. The question for the First-tier Tribunal was whether the claimant would be able to live without Article 15(c) risks in Kabul. This test is one of whether it is shown that there is a serious and individual threat to a civilian's life by reason of indiscriminate violence or internal armed conflict. I find that there was a failure to look at the claimant's individual circumstances (as found by the First-tier Tribunal) and apply them to the country of origin materials and reach conclusions on this matter: in particular it was not considered that she is a person with family to whom she can turn for support and not a lone woman; she is educated and has worked as a volunteer; and she has lived in Afghanistan with mental illness between 2013 and 2017. There is a failure to reason why she would not get sufficient mental health support with reference to the country of origin materials in the context of having family support.
17. The appeal was also allowed on Article 8 ECHR grounds, on the basis that the claimant would have very significant obstacles to integration. This decision likewise errs in law for failure to consider relevant matters and to reason the outcome. It is not explained why the claimant would get inadequate medical treatment in Afghanistan with reference to country of origin materials, or why her care needs would not be met if she has no difficulties with her family. It is again wrongly found that she would be a lone woman if returned to Afghanistan. Whilst there is country of origin evidence of general discrimination against those with mental health problems in Afghanistan this is insufficient to say that in the particular circumstances of the claimant having education, experience of voluntary work and apparent family support that she would not be able to integrate in society.
18. I substitute a decision dismissing the asylum appeal and preserve the findings which I have found lead to the dismissal of the asylum claim based on a risk of an honour killing/ forced marriage, said to come from the Taliban, her father and brother, at paragraphs 32 to 36 of the decision of the First-tier Tribunal. I also preserve the findings about the claimant's mental health at paragraphs 18 to 26

and the new documentation, at paragraphs 27 to 31, to which no challenge is made.

19. I set aside the decisions allowing the humanitarian protection and Article 8 ECHR appeals, and that dismissing the Article 3 ECHR appeal. I also set aside all findings at paragraphs 37 to 58. I adjourn the remaking of the humanitarian protection and human rights' appeals, which I find should take place before the Upper Tribunal. Mr Fazli said that there might be new evidence called from witnesses for these appeals and requested a Dari interpreter, but confirmed that he was happy for this remaking hearing to take place in a remote Skype for Business hearing.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal allowing the appeal on humanitarian protection and human rights grounds and substitute a decision dismissing the asylum appeal.
3. I adjourn the re-making of the humanitarian protection and human rights appeals.

Directions

- (i) The remaking hearing will consist of a remote Skype for Business hearing.
- (ii) Any further documentary evidence relied upon should be filed and served ten days prior to the remaking hearing.
- (iii) A Dari interpreter is requested.
- (iv) The time estimate is 3 hours.

Signed: Fiona Lindsley
Upper Tribunal Judge Lindsley

Date: 3rd November 2020