



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/04634/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 28<sup>th</sup> July 2014

**Determination Sent**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

NAJEEBULLAH SAFI  
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr A Alexander of Counsel, instructed by Duncan Lewis Solicitors  
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

**Introduction and Background**

1. The Appellant appeals against a determination of Judge of the First-tier Tribunal S J Clarke promulgated following a hearing on 20<sup>th</sup> August 2013.
2. The Appellant is a male citizen of Afghanistan born 1<sup>st</sup> January 1984 who arrived in the United Kingdom on 12<sup>th</sup> June 2009 and claimed asylum. He thereafter absconded before re-establishing contact with the authorities in the United Kingdom, indicating that he wished to pursue his asylum claim.
3. The Appellant claimed to have a well-founded fear of persecution by reason of imputed political opinion, on the basis that he had worked for a company delivering

fuel to American forces in Afghanistan. The application for asylum was refused on 26<sup>th</sup> April 2013, and the Respondent issued a Notice of Immigration Decision of that date indicating that it was proposed to remove the Appellant from the United Kingdom.

4. The appeal was heard by the First-tier Tribunal (FTT) on 20<sup>th</sup> August 2013, and dismissed on asylum, humanitarian protection and human rights grounds.
5. The Appellant was granted permission to appeal to the Upper Tribunal. At a hearing on 9<sup>th</sup> May 2014, after hearing representations from both parties, I set aside the decision of the FTT and the hearing was adjourned for further evidence to be given, so that the decision could be re-made by the Upper Tribunal. No findings were preserved, save for the finding that the Appellant is a national of Afghanistan. The reasons for setting aside the FTT decision are contained in my decision dated 17<sup>th</sup> May 2014 which was promulgated on 22<sup>nd</sup> May 2014.

### **The Law**

6. The Appellant would be entitled to asylum if he is recognised as a refugee, as defined in regulation 2 of the Refugee or Person of Need of International Protection (Qualification) Regulations 2006 as a person who falls within Article 1A of the 1951 Geneva Convention. The onus is on him to prove that he has a well-founded fear of persecution for a Convention reason (race, religion, nationality, membership of a particular social group or political opinion) and he is outside his country of nationality and unable or, owing to such fear, unwilling to avail himself of the protection of that country.
7. If not entitled to asylum the Appellant would be eligible for humanitarian protection under paragraph 339C of the Immigration Rules if he establishes substantial grounds for believing that if removed from the United Kingdom, he would face a real risk of suffering serious harm, and is unable or, owing to such risk, unwilling to avail himself of the protection of the country of return.
8. The Appellant has also claimed that his removal would breach Article 3 of the 1950 European Convention on Human Rights (the 1950 Convention) and it is for the Appellant to establish that if removed from the United Kingdom there is a real risk of contravention of the Appellant's right to freedom from torture or inhuman or degrading treatment or punishment.
9. The Appellant also relies upon Article 8 of the 1950 Convention. He must therefore prove that he satisfies the requirements of Appendix FM or paragraph 276ADE of the Immigration Rules, or show that there is a good reason for Article 8 to be considered outside the rules. If Article 8 is considered outside the rules, the Appellant must prove that he has established family and/or private life in the United Kingdom, and that the Respondent's decision would have consequences of such gravity as to engage the Article, and the Respondent must then show that the decision is lawful, necessary and proportionate.

10. The burden of proof is on the Appellant and can be described as a reasonable degree of likelihood, which is a lower standard than the normal civil standard of the balance of probabilities. I must look at the circumstances as at the date of hearing.

### **The Appellant's Claim**

11. The Appellant's claim as initially presented to the Respondent is set out in letters from his representatives dated 5<sup>th</sup> November 2012 and 10<sup>th</sup> April 2013, his screening interview dated 28<sup>th</sup> January 2013, and his substantive asylum interview dated 3<sup>rd</sup> April 2013. His claim may be summarised as follows.
12. The Appellant lived in the province of Laghman. His father died when the Appellant was young, fighting for the Mujahedeen. The Appellant had three step-brothers and a step-sister.
13. In 2004 he started working for AMA as a driver, delivering fuel to American army compounds in Afghanistan.
14. He experienced no difficulties until 6<sup>th</sup> November 2008 when his step-brother returned from the mosque, where the Taliban announced that anyone working for the Americans would be killed. His step-brother attacked him as a result of this, so the Appellant left his home and went to a friend's house. He received some treatment from a local doctor.
15. The next day he heard that the Taliban had killed his mother and his step-brother had reported to the police, that it was the Appellant who had killed his mother.
16. On 7<sup>th</sup> November 2008 the Appellant's friend arranged for the Appellant to leave his home area, and leave Afghanistan. He left on 7<sup>th</sup> November 2008 and travelled through various countries including Greece and France before arriving in the United Kingdom on 12<sup>th</sup> June 2009 and claiming asylum. He thereafter failed to report as ordered, subsequently explaining that he feared being returned to Afghanistan.
17. The Appellant was engaged to be married in Afghanistan, and he remains in contact with his fiancée by telephone.
18. The Appellant fears the Taliban if returned to Afghanistan, and also his step-brothers. He said in interview (question 96) that his step-brothers had informed the police that he had killed his mother, so that he would be arrested by the authorities and imprisoned, and then when released his step-brothers would be able to harm him.

### **The Respondent's Decision**

19. The detailed reasons for the Respondent's decision are set out in a letter dated 26<sup>th</sup> April 2013 which may be summarised as follows.
20. It was not accept that the Appellant was a national of Afghanistan as he had not submitted documentary evidence to prove his identity and only demonstrated a vague knowledge of Afghanistan.

21. It was not accepted that the Appellant had worked as a driver for AMA. The Appellant had produced a contract of employment, together with a letter from the owner of his company, and three photographs of himself and the vehicle that he drove. The Respondent noted that the font of the letterhead differed when the contract of employment was compared with the letter, and that neither the contract nor the letter proved that the Appellant delivered fuel to American compounds. The Respondent did not accept that the documents could be relied upon to support the Appellant's claim, and noted that when interviewed the Appellant had only been able to provide vague details as to where he had delivered fuel. It was therefore not accepted that he worked for AMA delivering fuel to American compounds.
22. The Respondent did not accept that the Appellant had been attacked by his step-brother. It was noted that the Appellant claimed to have been delivering fuel to American compounds for four years prior to being attacked. The Appellant when interviewed had stated that his village was controlled by the Taliban, and everyone had seen him driving and knew he worked for a company delivering fuel to Americans. It was not considered credible that he would be attacked after four years.
23. The Appellant claimed that he had received substantial injuries as a result of the attack yet had been able to walk for fifteen-twenty minutes to a friend's house. This was not considered credible. It was therefore not accepted that the Appellant's step-brother had attacked him as a result of the Appellant delivering fuel to American forces.
24. The Respondent contended that the Appellant had given inconsistent dates as to when the attack took place, those dates being 6<sup>th</sup> November 2008 and 15<sup>th</sup> November 2008 (it is not clear why the Respondent referred to 15<sup>th</sup> November 2008 as this was not part of the Appellant's case. Further representations from his solicitors at A4 of the Respondent's bundle referred to the date of 15<sup>th</sup> August 2008, which appears to be incorrect). The Respondent did not accept the Taliban had killed the Appellant's mother as claimed, nor that his step-brother had reported to the police that the Appellant had killed his mother. This was due to inconsistencies in the Appellant's account.
25. The Respondent relied upon section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 as the Appellant had claimed asylum on 12<sup>th</sup> June 2009, and then absconded and failed to resume contact with the Respondent until 12<sup>th</sup> June 2012. This had delayed the handling of his claim by three years.
26. In summary, the Respondent rejected the Appellant's claim in its entirety.
27. The Respondent did not accept that the Appellant would be at risk if returned to Afghanistan, and believed that he could return to his home area. In the alternative the Respondent believed that the Appellant had a reasonable option of internal relocation to Kabul.
28. It was not accepted that the Appellant was entitled to asylum, or humanitarian protection, and it was not accepted that there would be a breach of his human rights if returned to Afghanistan.

## The Hearing

### Preliminary Issues

29. I established that I had received all documentation upon which the parties intended to rely, and that each party had served the other with any documentation upon which reliance was to be placed.
30. I had the documents that had been before the First-tier Tribunal, those being the Respondent's bundle with Annexes A-H, the Appellant's bundle comprising 296 pages, and a skeleton argument.
31. An application had been made on behalf of the Appellant pursuant to rule 15(2A) of The Tribunal Procedure (Upper Tribunal) Rules 2008 seeking to admit into evidence the psychiatric report dated 17<sup>th</sup> July 2014 prepared by Dr Wootton. The application was made on the basis that when the appeal was heard by the First-tier Tribunal the Appellant's solicitors were not aware that he was suffering from depression and taking medication.
32. Mr Walker did not object to the application, which I granted.
33. Mr Walker produced the European Court of Human Rights decision H and B v The UK 70073/10 and 44539/11 upon which he intended to rely.
34. Mr Alexander confirmed that the Appellant claimed asylum on the basis of his imputed political opinion, and claimed humanitarian protection in the alternative. It was also confirmed that the Appellant wished to rely upon Articles 3 and 8 of the 1950 Convention, and it was accepted that the Appellant could not satisfy the requirements of Appendix FM and paragraph 276ADE of the Immigration Rules.
35. Both representatives indicated that they were ready to proceed and there was no application for an adjournment.

### The Appellant's Evidence

36. There was no difficulty in communication between the Appellant and the interpreter in Pashto. The Appellant adopted as his evidence his witness statement dated 12<sup>th</sup> August 2013. He was not asked any further questions by Mr Alexander.
37. The Appellant's witness statement may be summarised as follows. The Appellant's relationship with his step-siblings was not bad when they were younger. His step-siblings were older than him. After the death of his father, the family land was divided between them. The Appellant's mother was his father's second wife.
38. The Appellant did not have former schooling. The Appellant started working for a company as an apprentice, and by the age of 18 years had started working as a driver. He was given a job with AMA in 2004 when he was 20 years of age.
39. The job entailed driving a fuel tanker and delivering fuel to the American army. The Appellant undertook this employment between 2004 and 2008.

40. It was on 6<sup>th</sup> November 2008 when his step-brother attacked him because his employment involved assisting the Americans. The Appellant was hit with a branch and kicked. This occurred in the family home. The Appellant's mother could do nothing to prevent the attack. The Appellant's step-brother then left the house and the Appellant also left, he stayed with a friend where he had some medical treatment from a local doctor. His hand was broken.
41. The next morning the Appellant was told that his mother had been killed by the Taliban, and his step-brother told the authorities that the Appellant's mother had asked him to stop working for the Americans, and the Appellant had refused and then killed his mother.
42. The Appellant would not stay at his friend's address as this would be dangerous for his friend's family so he was provided with a car and driven to Peshawar. An agent was found and the Appellant travelled to the United Kingdom via Greece.
43. The Appellant has a fiancée who still lives in Afghanistan. They became engaged in 2008. The Appellant had some savings which he was going to use for his engagement, but which he later used to finance his journey to the United Kingdom. The Appellant is still in contact with his fiancée by telephone.
44. The Appellant arrived in the United Kingdom on 12<sup>th</sup> June 2009 and claimed asylum. He then absconded because he feared he would be deported.
45. The Appellant still experiences pain from the beating that he sustained from his step-brother. His back hurts and there is a bone protruding due to the injury he sustained, and he has scars on his face, hand, leg and arms. He also suffered an injury to his nose.
46. The Appellant cannot return to Afghanistan as he fears the Taliban because he was working as a driver delivering fuel to the American army. He would be recognised if he returned. If he went to a new city people would know that he had just moved there and the Taliban has informants everywhere.
47. The Appellant also fears the authorities because they believe that he killed his mother.
48. The Appellant was briefly cross-examined and asked why he waited three years before pursuing his asylum claim, after initially claiming asylum in June 2009. He said that he was afraid that he would be removed from the United Kingdom.
49. By way of clarification I asked the Appellant how he had obtained the documents listed at E, F and G in the Respondent's bundle these being a contract of employment dated 23<sup>rd</sup> May 2004, a letter from the company that employed him, stating that he had disappeared on 5<sup>th</sup> November 2008 and the company had no information as to his whereabouts, and three photographs of the Appellant in and standing outside a lorry.
50. The Appellant said that Tor Khan who had helped him find employment, had obtained the documents and given them to a person who was travelling from

Afghanistan to the United Kingdom. That person, who the Appellant did not know, had delivered the documents to him in this country. The Appellant said that the photographs had been in his lorry as had his driving licence. The employment contract and letter had been held by his employer.

51. The psychiatric report referred to the Appellant leaving home aged 16 and I asked where he had lived. The only address that he had had was his home address, but he said that the office of the company that he worked for was in Kabul, and he had worked all over Afghanistan.
52. When asked who had paid the agent to help him leave Afghanistan and travel to the United Kingdom, the Appellant said his friend Tor Khan and his father-in-law. He did not know how much was paid. He said it was his money that he had left with Tor Khan, who gave it to his father-in-law who then paid the agent.
53. There were no questions arising from mine.

### **The Respondent's Submissions**

54. Mr Walker relied upon the reasons for refusal letter dated 26<sup>th</sup> April 2013. If I found that the Appellant was an employee of a company which had been working for the Americans, I was referred to paragraph 34 of that letter, and I was also referred to paragraphs 92-101 of H and B in support of the submission that the Appellant has a reasonable internal relocation option in Kabul if I found that he had been working for a company which provided fuel to the Americans and if I found that he would be at risk in his home area.

### **The Appellant's Submissions**

55. Mr Alexander relied upon the written skeleton argument. I was asked to find the Appellant a credible witness and that reliance could be placed upon the documentary evidence.
56. Mr Alexander submitted that the Appellant has a profile that would put him at risk if returned to Afghanistan on the basis that he had worked for a company that assisted the Americans.
57. I was asked to place weight upon the psychiatric report and to conclude that there was no adequate treatment available for the Appellant in Afghanistan. Mr Alexander submitted that the Appellant's health issues reached the high threshold set out in N v SSHD [2005] UKHL 37.
58. At the conclusion of oral submissions I reserved my decision.

### **My Conclusions and Reasons**

59. In re-making this decision, I have taken into account all the evidence placed before me, both documentary and oral. If a particular piece of evidence is not referred to, this does not mean that it has not been considered.

60. I have considered the evidence in the round, and accept that it is important that I view the Appellant's account of events, in the context of conditions in Afghanistan.
61. I have taken into account paragraph 339L of the Immigration Rules which I set out below;

"It is the duty of the person to substantiate the asylum claim or establish that he is a person eligible for humanitarian protection or substantiate his human rights claim. Where aspects of the person's statements are not supported by documentary or other evidence, those aspects will not need confirmation when all of the following conditions are met:

- (i) the person has made a genuine effort to substantiate his asylum claim or establish that he is a person eligible for humanitarian protection or substantiate his human rights claim;
  - (ii) all material factors at the person's disposal have been submitted, and a satisfactory explanation regarding any lack of other relevant material has been given;
  - (iii) the person's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the person's case;
  - (iv) the person has made an asylum claim or sought to establish that he is a person eligible for humanitarian protection or made a human rights claim at the earliest possible time, unless the person can demonstrate good reason for not having done so; and
  - (v) the general credibility of the person has been established".
62. There was no dispute before me as to the Appellant's nationality. A report on his nationality had been prepared for the FTT, and the FTT had found that he is an Afghan national. That finding was preserved.
63. I find that the Appellant entered the United Kingdom in June 2009 and claimed asylum. Thereafter he absconded before re-establishing contact with the Home Office in June 2012.
64. The Appellant underwent a screening interview on 28<sup>th</sup> January 2013 and a substantive asylum interview on 3<sup>rd</sup> April 2013.
65. I am satisfied and find as a fact that the Appellant worked as a driver in Afghanistan. I make this finding based upon his oral evidence, and the documentary evidence from the company that employed him. The letter heading is different when the contract is compared with the letter confirming that the Appellant disappeared in November 2008, but I draw no adverse interest from that. The contract was made in May 2004, and it is unclear when the letter was written, but it must have been sometime after November 2008, therefore there is at least four years difference in time between the two documents. It is possible that the company changed their letter heading.
66. I do not draw adverse inference from the minor discrepancy in relation to dates, in that the Appellant claimed that he was attacked on 6<sup>th</sup> November 2008 and left

Afghanistan the following day, whereas the letter from his company states that he disappeared on 5<sup>th</sup> November 2008. Reference in the Respondent's refusal letter to 15<sup>th</sup> November 2008 is in my view an error.

67. Having accepted that the Appellant worked as a driver in Afghanistan, I have to consider the nature of his employment, as it is his case that because he supplied fuel to the American forces, this caused his step-brother to attack him. I do not find that the Appellant has discharged the burden of proof on this issue.
68. The Appellant's case is that his village was controlled by the Taliban. He had worked for the same company, and undertaken the same employment for four years without any difficulty whatsoever. The step-brother was aware of his employment. I do not find that any satisfactory explanation has been given as to why the Appellant was able to supply the Americans with fuel without any difficulties, for a period of four years, while living in a Taliban controlled village. The Appellant confirmed in answer to question 80 of his interview that the village is controlled by the Taliban, and in answer to question 57 when asked how people knew he worked for AMA, he said he "was seen by everyone."
69. If the Appellant had been, in effect working for the Americans, and the Taliban were aware of this, I conclude that it is reasonably likely that he would not have been able to undertake this employment for four years without difficulty. In addition the documentary evidence produced by AMA does not confirm that the company supplies fuel to the American forces. There is no reference to this either in the contract or the letter. The Appellant when interviewed and asked for details of his employment was vague in providing details as to where he delivered the fuel.
70. Although there is a low standard of proof, I conclude that the only evidence that the Appellant worked for the Americans, is the Appellant's own assertion. The low burden of proof does not mean that I have to accept an assertion that is made without any other independent evidence. I accept there is no requirement for corroboration, but having considered the evidence in the round, I do not accept that the Appellant delivered fuel to American forces.
71. I do accept that the Appellant was attacked. I place weight upon the medical report prepared by Mr Mason dated 25<sup>th</sup> July 2013. I accept that Mr Mason is an expert in his field, and note his opinion in paragraph 6.1, that in themselves, the Appellant's scars are non-specific and the injuries to his nose not uncommon. However, as explained in paragraph 6.3, taken together, Mr Mason's opinion is that the Appellant's lesions are highly consistent with his account of being assaulted approximately three and a half years before Mr Mason's report was prepared. Mr Mason notes that the lesions on the right forearm and hand could easily result from warding off blows and the scars and lesions on his right eyebrow and nose strongly suggest that they result from blows from a hard object. 'Highly consistent', means the lesions could have been caused by the trauma described, and there are a few other possible causes.
72. I therefore accept that the Appellant was attacked, and I am prepared to accept his account that he was attacked by his step-brother. What I do not accept, is that this

attack was caused by the Appellant delivering fuel to American forces. I note in paragraphs 15 and 18 of the psychiatric report dated 17<sup>th</sup> July 2014 that the Appellant describes his three step-brothers as being cruel to him, beating him and insulting him, although he claims that after leaving home aged 16 he did not have any further problems from them.

73. There is however according to the Appellant's own case, a history of his step-brothers beating him and acting in a cruel manner towards him.
74. I do not accept that the Appellant's mother was killed by the Taliban as a result of the Appellant's activities. I note the absence of any documentary evidence to prove the death of the Appellant's mother, but I do not place great weight on this absence. I appreciate in asylum cases it is often very difficult to obtain documentary evidence, although in this case, the Appellant was able to obtain documentary evidence as to his employment.
75. The Appellant's account is that he was attacked by his step-brother, and in paragraph 3 of his witness statement the Appellant explains that his step-brother then left the house. After this he spoke with his mother, and the Appellant left the house in the evening. If the step-brother wished to kill the Appellant, he could have attempted to do that at that time, but did not, and left the Appellant in the house with his mother. The Appellant (at question 67 of his interview) explained that his mother was killed because the Taliban went to his home, and found out that he had left, his step-brother suggested that the Appellant's mother should be killed so that the Appellant would return, so that they could catch him and kill him. This is not credible in my view. If the step-brother and Taliban wished to have killed the Appellant, the step-brother would not have left the Appellant at his home, giving him ample opportunity to leave once the step-brother had departed.
76. The Appellant has not proved to a reasonable degree of likelihood either that his mother was killed, or that the authorities had been told the Appellant had killed her. The Appellant in paragraph 3 of his witness statement explains that his step-brother told the authorities the Appellant's mother had asked him to stop working for the Americans, the Appellant refused and then killed his mother. The Appellant has not proved how he came to receive that information. The Appellant's case in answering question 66 of his interview was that the next morning his friend told him that he had been informed of this by a doctor. A different account was given by the Appellant in answering question 72 of the interview, when he said his friend discovered his mother's death at morning prayer in the mosque when he met a villager who told him what had happened. The Appellant has not satisfactorily explained how he was aware of the account given to the authorities by his step-brother.
77. I accept that the Appellant left Afghanistan using an agent. I do not find it credible that he would be unaware how much was paid. He has said that some of the money that was used belonged to him and therefore he would know how much money he had used. He has said that funds were also given by his father-in-law. If this event had occurred as he claimed, I find that he would be aware what amount of money had been paid.

78. However I do accept that he travelled through various countries before illegally entering the United Kingdom and claiming asylum when discovered.
79. I have to consider section 8 of the 2004 Act, and I find that the Appellant's absconding for a period of three years after his initial asylum claim, does adversely affect his credibility. I find that his conduct invokes section 8(2)(c) on the basis that it was designed or likely to obstruct or delay the handling or resolution of his claim, or the taking of a decision in relation to him. I do not accept that the Appellant has adequately explained why he lived in this country illegally for three years before claiming asylum. His case is that he came to the United Kingdom to claim asylum, and he has given no rational explanation as to why having claimed asylum, he then absconded for a period of three years. I do not accept that the Appellant feared that he would be immediately deported as he had travelled a substantial distance, at financial cost to himself, in order to claim asylum, and if he genuinely feared for his life, he would have pursued his asylum claim rather than absconding.
80. I conclude that the Appellant is a national of Afghanistan who was attacked by his step-brother. The Appellant worked as a driver in Afghanistan. I do not accept that the Appellant worked for a company that delivered fuel to the Americans. I do not accept that the Appellant's mother was killed nor do I accept that the Appellant's step-brother reported to the authorities that the Appellant had killed his mother. I do not accept as credible the Appellant's explanation in answer to question 96 of his interview, that the report was made so that the Appellant would be arrested by the authorities and imprisoned, and then when he was released his step-brothers would be able to harm him.
81. I do not find that the Taliban would have any reason to have an adverse interest in the Appellant. The Appellant's difficulty was with his step-brother not the Taliban, and therefore I conclude that the Appellant could in fact return to his home area and if necessary seek protection from the police.
82. However in the alternative, I have considered whether the Appellant has the option of internally relocating to the city of Kabul, and whether this would be unduly harsh.
83. I find that relocating to the city of Kabul would not be unduly harsh. I make this finding having taken into account the diagnosis in the psychiatric report.
84. I have considered PM and Others Afghanistan CG [2007] UKAIT 00089 which is referred to in paragraph 33 of H and B, and in summary indicates that if an individual has a well-founded fear in their home area, it is reasonable to expect them to live in Kabul which is a functioning city. Relocation there would not be unreasonable.
85. A similar conclusion was reached in RQ Afghanistan CG [2008] UKAIT 00013, which is referred to in paragraph 34 of H and B, in which in brief summary it was decided that unless there were particular reasons, it would not be unduly harsh to expect an Appellant with no individual risk factors to relocate to Kabul.
86. I have also considered AK Afghanistan CG [2012] UKUT 00163 (IAC) and set out below paragraph (iv) of section B of the head note;

“(iv) whilst when assessing a claim in the context of Article 15(c) in which the Respondent asserts that Kabul City would be a viable internal relocation alternative, it is necessary to take into account (both in assessing safety and reasonableness) not only the level of violence in that city but also the difficulties experienced by that city’s poor and also the many Internally Displaced Persons (IDPs) living there, these considerations will not in general make return to Kabul unsafe or unreasonable.”

87. The decision in H and B is not binding upon the Tribunal, but may be regarded as persuasive authority. In that decision the court were considering two Appellants who had previously worked for the UN and US forces and found in paragraph 97;

“the Court considers that there is insufficient evidence before it at the present time to suggest that the Taliban have the motivation or the ability to pursue low level collaborators in Kabul or other areas outside their control.”

In this appeal, I have not found that the Appellant worked for a company supplying fuel to the American forces and therefore would not be regarded by the Taliban as a collaborator. However even if he had undertaken that employment, bearing in mind the length of time that has elapsed since that employment ceased in 2008, and the findings in the country guidance decisions referred to above, and in H and B, I conclude that the Appellant would not be at risk in Kabul.

88. I therefore conclude that the Appellant is not entitled to a grant of asylum.
89. I conclude that the Appellant is not entitled to a grant of humanitarian protection. The decision in AK Afghanistan makes it clear that the level of indiscriminate violence in Afghanistan, taken as a whole, is not at such a high level as to mean that, within the meaning of Article 15(c) of the Qualification Directive, that a civilian, solely by being present in the country, faces a real risk which threatens his life or person.
90. For the same reason I find that Article 3 of the 1950 Convention will not be breached if the Appellant was returned to Afghanistan. I have to consider Article 3 on medical grounds, in view of the contention made by Mr Alexander that the Appellant’s depression and post traumatic stress disorder is of such a high level, that Article 3 would be breached by reason of his removal to Afghanistan. I do not accept this to be the case. It was decided in GS and EO (Article 3 - Health Cases) India [2012] UKUT 00397 (IAC) that the fact that life expectancy is dramatically shortened by withdrawal of medical treatment in the host state is in itself incapable of amounting to the highly exceptional case that engages the Article 3 duty. In this appeal, there is no satisfactory evidence that the Appellant’s life expectancy would be dramatically shortened if he was removed to Afghanistan.
91. The mental health issues that the Appellant now relies upon, have not been considered by the Respondent, nor the First-tier Tribunal. The Appellant made no mention of mental health issues in his interviews save to say that he had memory problems. The Appellant’s solicitors were unaware that he was suffering from depression and taking medication.

92. There is no evidence that the Appellant consulted any doctors in the United Kingdom during the period in which he was listed as an absconder between June 2009 and June 2012. The psychiatric report at paragraph 25 refers to an assessment of the Appellant on 17<sup>th</sup> September 2013 which concluded that the Appellant had an adjustment disorder and it was recommended that he seek support, and that his GP prescribe him the anti-depressant mirtazapine. Dr Wootton interviewed the Appellant on 10<sup>th</sup> July 2014. At paragraph 47 of the report Dr Wootton confirms that she is reliant primarily on the Appellant's account to her. It is an account that I have not found to be credible.

93. In paragraph 48 Dr Wootton confirms that the Appellant meets the criteria for a diagnosis of post traumatic stress disorder and depressive disorder. It is relevant that Dr Wootton states;

“Clearly I am reliant on Mr Safi's account in making this diagnosis.”

94. While I of course accept Dr Wootton's expertise, it is relevant that she has stated on two separate occasions that she is reliant upon the Appellant's account. The credibility of an account must be assessed by a judge, and in this case, I have found the account not to be credible, with the exception being that I accept the Appellant was attacked by his step-brother.

95. I accept that the Appellant is currently receiving anti-depressant medication and that psychological therapy and medication are recommended for the treatment of depressive disorder and PTSD.

96. In my view there is no evidence contained within the psychiatric report to prove that the Appellant's life expectancy would be shortened by withdrawal of medical treatment in the United Kingdom. Dr Wootton does not state that there is a high risk of suicide. She states that the Appellant has reported ongoing suicidal thoughts but not acted upon those thoughts.

97. Dr Wootton comments in paragraph 55 that the prospect of returning to Afghanistan is likely to increase the Appellant's stress. I accept that to be the case, as the Appellant has made it clear that he wishes to live in the United Kingdom.

98. However, in considering the Appellant's mental health issues under Article 3, I do not find that there would be a breach of Article 3 if the Appellant was removed to Afghanistan.

99. I move on to consider Article 8. It is accepted that the Appellant cannot satisfy Appendix FM as he has no family members in the United Kingdom. He is not in a relationship and has no children.

100. It is also accepted that he cannot satisfy the requirements of paragraph 276ADE because he has not lived in the United Kingdom for at least twenty years, and it is not contended that he has no ties to Afghanistan.

101. I have to consider whether Article 8 should be considered outside the Immigration Rules. In my view this would be appropriate in this case because of the Appellant's

mental health issues. I have taken into account Akhalu (Health Claim: ECHR Article 8) [2013] UKUT 00400 (IAC) and set out below paragraphs 1 and 2 of the head note;

“(1) MM (Zimbabwe) v Secretary of State for the Home Department [2012] EWCA Civ 279 does not establish that a claimant is disqualified from accessing the protection of Article 8 where an aspect of her claim is a difficulty or inability to access healthcare in her country of nationality unless, possibly, her private or family life has a bearing upon her prognosis. The correct approach is not to leave out of account what is, by any view, a material consideration of central importance to the individual concerned but to recognise that the countervailing public interest in removal will outweigh the consequences for the health of the claimant because of a disparity of healthcare facilities in all but a very few rare cases.

(2) The consequences of removal for the health of the claimant who would not be able to access equivalent healthcare in their country of nationality as was available in this country are plainly relevant to the question of proportionality. But, when weighed against the public interest in ensuring that the limited resources of this country’s health service are not used to the best effect for the benefit of those for whom they are intended, those consequences do not weigh heavily in the claimant’s favour but speak cogently in support of the public interest in removal.”

102. I accept that the Appellant is currently receiving medication for his depression. I accept that he displays symptoms of post traumatic stress disorder, even though I have not accepted in full, his account of what he claims occurred in Afghanistan. I take into account that the Appellant was able to live in this country, without seeking any assistance for his mental health problems for at least three years between June 2009 and June 2012.
103. I accept that the health facilities in Afghanistan are considerably below what is available in this country. I have considered the Country of Origin Information Report on Afghanistan dated 15<sup>th</sup> February 2013 and the section on mental health at paragraphs 28.46 to 28.50. This confirms the lack of adequate facilities in Afghanistan.
104. However I have to balance the public interest, against the wishes of the Appellant to remain in the United Kingdom and to receive treatment for his mental health issues. I conclude, attaching considerable weight to the decision in Akhalu, that the public interest does outweigh the consequences for the health of the Appellant. Those consequences will be that he is not likely to receive the medication that he currently receives. That does not amount to a life threatening condition. I take into account my finding that the Appellant would not be at risk in Afghanistan. I take into account the fact that he was able to function without any medical assistance in this country for at least three years.
105. I conclude that the Respondent’s decision to remove the Appellant from the United Kingdom is proportionate and does not breach Article 8 of the 1950 Convention.

## **Decision**

The decision of the First-tier Tribunal involved the making of an error on a point of law and was set aside. I substitute a fresh decision as follows.

I dismiss the appeal on asylum grounds.

The Appellant is not entitled to humanitarian protection.

I dismiss the appeal on human rights grounds.

## **Anonymity**

The First-tier Tribunal did not make an anonymity direction. There was no application for anonymity, and the Upper Tribunal does not make an anonymity order.

Signed

Date 30<sup>th</sup> July 2014

Deputy Upper Tribunal Judge M A Hall

## **TO THE RESPONDENT FEE AWARD**

No fee was paid or is payable. The appeal is dismissed. There is no fee award.

Signed

Date 30<sup>th</sup> July 2014

Deputy Upper Tribunal Judge M A Hall