



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/09475/2014

THE IMMIGRATION ACTS

Heard at Field House
On 28 April and 16 June 2015

Decision & Reasons Promulgated
On 26 June 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

FS (AFGHANISTAN)

Respondent/Claimant

Representation:

For the Appellant: Ms Fijiwala (28.04.15) & Ms Everett (16.06.15), Specialist Appeals Team

For the Respondent/Claimant: Mr Burrett, Counsel, instructed by Wick & Co Solicitors

DECISION AND REASONS

1. The Secretary of State appeals to the Upper Tribunal from the decision of the First-tier Tribunal allowing the claimant's appeal against refusal of further leave to remain on asylum and human rights (Articles 2 and 3 ECHR) grounds. The First-tier Tribunal made an anonymity direction, and I consider that the claimant should be accorded anonymity for these proceedings in the Upper Tribunal.

2. The claimant is a national of Afghanistan, whose assigned date of birth is 1 January 1995. He arrived in the United Kingdom on 2 November 2009 and claimed asylum on 9 November 2009. His asylum claim was refused, but he was granted discretionary leave to remain as an unaccompanied asylum seeking minor. On 26 June 2012 he applied for further leave to remain, and the application was refused on 30 October 2014. He had alleged a fear of return only to certain areas within Afghanistan, namely Lamya village, Kapisa province. It was not accepted he was at risk in that area. But should he feel uncomfortable in returning to his former home, then sufficiency of protection would be available to him in a place of relocation, such as Kabul.

The Hearing Before, and the Decision of, the First-tier Tribunal

3. The claimant's appeal came before Judge Morrison sitting at Hatton Cross in the First-tier Tribunal on 29 January 2015. The claimant was represented by Mr Burrett of Counsel, and Ms Fijiwala appeared on behalf of the Secretary of State. In his subsequent decision, the judge found that the claimant was credible in his core claim. His father was a member of the Taliban, and spent much of his time with the Taliban fighting for them. For eighteen months prior to his arrival in the UK, there was heavy fighting between Government forces and the Taliban, as a result of which his father was killed. This happened after Government forces attacked the family's guest house, which adjoined their home and which Taliban members who were in the area used as accommodation. He and his mother were unharmed in the attack by the Government forces. His older brother A was injured, but the Taliban took him away and he returned about two months later. After the attack, Government forces would come and search the house, but they had never shown any interest in the claimant. The Taliban also visited. They allowed his brother to return from the madrasa occasionally to visit him and his mother. The Taliban told the claimant they expected him to join them, and they expected him to undergo training in one or two years' time. His mother did not want him to join the Taliban. So she sold the family land and arranged for an agent to take the claimant and his older brother to the United Kingdom. The claimant had travelled with his older brother as far as France, but they had then become separated.
4. Drawing heavily on an expert report prepared by Dr Giustozzi, the judge found that the claimant would be at risk on return to Kapisa, both from the Taliban and from Government forces, because of his family's known history with the Taliban.
5. At paragraphs [44] to [48], the judge addressed the question of whether the claimant could safely relocate to Kabul. He noted at paragraph [45] that it was Dr Giustozzi's view that the claimant would be at risk from the Taliban in Kabul as the Taliban was increasingly active in Kabul, and eventually the background of individuals would be checked and their background would become known.
6. At paragraph [46] he cited the following passage from Dr Giustozzi's report:

If [FS] opted to place himself under the protection of the Authorities, for example denouncing the Taliban, he would then turn into a target for the Taliban *which as a reluctant recruit he is not* (my emphasis). The Taliban have the means to track down

their targets. The Taliban's intelligence operations are getting increasingly sophisticated and their ability to track down individuals is very sophisticated.

7. At the end of paragraph [46], he noted Dr Giustozzi's conclusion that the claimant would still be at risk from both the Taliban and the Authorities in Kabul "in view of his family's known connection with the Taliban".
8. At paragraph [47] he indicated that he accepted Mr Burrett's submission that the position of the claimant was distinguishable from that of the appellant in **AK**, as the claimant had a particular risk profile whereas the appellant in **AK** did not have a particular risk profile in Kabul.
9. The judge went on to allow the appeal on asylum grounds, and under Articles 2 and 3 ECHR. He dismissed an alternative claim for humanitarian protection, and observed that the claimant's Article 8 appeal on its own would be unlikely to have met with success given that the claimant clearly did not meet the requirements of Rule 276ADE, and that Ms Vaid acknowledged in her evidence there was nothing exceptional in relation to the claimant's private life in the UK.

The Application for Permission to Appeal

10. A member of the Specialist Appeals Team settled an application for permission to appeal to the Upper Tribunal. Ground 1 was the judge had failed to provide adequate reasons as to why the claimant would be at risk in Kabul from the Taliban, as at paragraph 40 of the judge's decision it was recorded that "the Taliban rarely practise forced recruitment nowadays", which was consistent with the country guidance authority of **HK and Others (minors - indiscriminate violence - forced recruitment by Taliban - contact with family members) Afghanistan CG [2010] UKUT 378 (IAC)**.
11. Ground 2 was the judge had failed to provide adequate reasons as to why the claimant would be at risk in Kabul from the Authorities. No evidence was referred to in support of the contention that someone who had left their home area to avoid recruitment to the Taliban would be of any interest to the Authorities resulting in any mistreatment of such severity to qualify for international protection. A similar issue (in the context of Hizb-i-Islami) was addressed in **PM and Others (Kabul - Hizb-i-Islami) Afghanistan CG [2007] UKAIT 0089** at paragraph [136].

Grant of Permission to Appeal on 3 March 2015

12. First-tier Tribunal Judge Cheales granted permission to appeal for the following reasons: "it is arguable that the judge has not given adequate or properly reasoned findings for why the [claimant] would be at risk on return to Kabul."

The Error of Law Hearing

13. At the hearing before me to determine whether an error of law was made out, Mr Burrett mounted a robust defence of the judge's decision. He submitted that the

claimant had a higher risk profile than a normal returnee, as his family had operated a known Taliban safe house. The risk was greater for him because his family had been specifically targeted by the Authorities.

14. On behalf of the Secretary of State, Ms Fijiwala relied on the passages from the country guidance cases cited in the grounds of appeal, and also on some passages in the country guidance case of **AK [2012] UKUT 163 (IAC)**, including at paragraph [253] where the Upper Tribunal rejected an assessment by Dr Giustozzi that internal relocation to Kabul for AK would be difficult, if not altogether impossible.
15. I found that an error of law was made out, such that the decision should be set aside and remade. I gave my reasons for so finding in short form, and my extended reasons are set out below.

Reasons for Finding an Error of Law

16. As Dr Giustozzi acknowledged in the passage cited by the judge in paragraph [46], the claimant's history did not engender a risk per se for the claimant in Kabul at the hands of the Taliban. The mere fact that he had been spirited away from a Taliban stronghold before he was old enough to undergo combat training for the Taliban did not mean that the Taliban were going to pursue him with malign intent if and when they discovered, through spies or informants, that many years later he was living as a civilian in Kabul. The claimant was only going to make himself a target for the Taliban in Kabul if he made some gesture which invited retaliation from the Taliban, such as by publicly denouncing the Taliban. Again, this was acknowledged by Dr Giustozzi in the same passage cited by the judge at paragraph [46]. Thus in order for the claimant to be at real risk from the Taliban in Kabul there had to be a real risk of the claimant engaging in overt anti-Taliban activity in Kabul, for which there was absolutely no evidential basis. There was nothing in the claimant's evidence which remotely suggested that he would publicly denounce the Taliban, and the judge did not find that there was a real risk of him doing so. So an essential finding is missing from the judge's reasoning process to support the conclusion that the claimant faces a real risk from the Taliban in Kabul. Thus ground 1 is made out.
17. As to ground 2, I find that **AK** is of no real assistance to the argument advanced by Ms Fijiwala, as the principal basis of AK's claim was that he had fled his home area of Ghazni to escape persecution at the hands of the family of a powerful warlord who discovered that he had begun a relationship with his niece. In his expert report in that case, Dr Giustozzi did not opine that AK faced a real risk of persecution in Kabul from either the Authorities or from the warlord, and so the Upper Tribunal's rejection of his opinion on the reasonableness of internal relocation for AK does not in itself undermine the proposition that the Authorities in Kabul would have an adverse interest in the claimant, who has a different history from that of AK.
18. Of much greater relevance is the guidance given in **PM and Others CG [2007] UKAIT 0089**, a country guidance authority which is referred to in the refusal letter. The headline guidance includes the following:

Those returned from the United Kingdom are not at real risk, without more, of being suspected by the Authorities as insurgents.

The past of an individual seeking accommodation or work in Kabul, or elsewhere, may be discovered and mentioned to the Authorities. Similarly, the Authorities may become aware of someone newly arrived in an area. That may result in a person being detained for questioning but there is no satisfactory evidence such questioning gives rise to a real risk of serious harm.

19. Although the insurgency under consideration in **PM** was insurgency by the Hizb-i-Islami, I consider that the guidance is of general application and in any event there is no reason to suppose that the Authorities' approach to family members of known Taliban insurgents would be any different than it was to family members of known Hizb-i-Islami insurgents. At paragraph [136] of **PM** the Tribunal said:

Dr Giustozzi was specifically asked, a number of times, about the way in which the security forces may approach those who they suspect could have information of use to them in their counterinsurgency activities. He initially described it as harassment. He said it may take the form of visits to their home and of the asking of questions. He did not volunteer the suggestion that people may be seriously mistreated. When he was asked about the position of returning failed asylum seekers, the only example he could give was of a young man who it was said had been forced to leave Afghanistan. He was the son of a professor, but when pressed it became clear that he was not a returnee, but a young man who had lived in a village in Afghanistan all along. We did not learn anything from that evidence about what may happen to the appellants on return. In summary, we concluded that it has not been demonstrated that returnees such as the appellants would be at real risk in Kabul. It is possible, but no more, that after they had been here for a period, their existence would become known to the security forces. The evidence is they would not be suspected of directly knowing anything about what is going on in the insurgency although after a period, in common with all the others, they may be asked questions about what they know from their relatives and friends and their own personal networks. There is no satisfactory specific evidence about the way in which they are likely to be treated such as to establish that there is a reasonable likelihood that they would be subjected to serious mistreatment. We accept that if a person falls into the hands of the Authorities as a suspect it is possible they may be seriously mistreated but we do not find there is a real risk of that on the basis of the facts in these cases. Clearly, if such a returnee elects to become active for Hizb-i-Islami the situation may be different, but these appellants are not being returned on the basis that that is what they will do. After all, they came here to avoid that.

20. This claimant was sent to the United Kingdom to avoid becoming embroiled in fighting for the Taliban against Government forces. The judge does not attempt to explain in his reasoning what it is about the claimant's material history which, once it became known to the security forces, would engender a reasonable likelihood that he would be subjected to serious mistreatment. The claimant comes from a known Taliban stronghold, but he fled to the west in order to avoid being recruited by the Taliban, as did his older brother. His father fought for the Taliban, but his father was a follower, not a leader: he fought under the command of a senior commander. Accordingly, contrary to Mr Burrett's submissions both here and below, it is far from obvious that the claimant would have an enhanced risk profile in Kabul on account of his past history. The judge failed to take into account country guidance authority

which undermines Dr Giustozzi's opinion that the claimant would be at risk from the Authorities in Kabul, with the result that he has not given adequate reasons for accepting Dr Giustozzi's expert opinion on this issue.

Future Disposal

21. It was agreed by the parties that the decision should be remade in the Upper Tribunal at a resumed hearing. It was agreed that the remaking of the decision should be postponed to a resumed hearing as there had been a very recent decision by the President allowing the appeals against removal to Kabul of some failed asylum seekers, who had deployed new evidence of an increased risk for returnees to Kabul. Mr Burrett wished to deploy this new evidence for the purposes of the remaking of the decision, and I gave him permission to do so provided that it was served on the Upper Tribunal and on the Specialist Appeals Team in a paginated and indexed bundle not less than seven days before the resumed hearing.
22. It was further agreed the judge's findings of fact on the topic of past persecution would be preserved.
23. Although the judge did not formally dismiss the alternative appeal on Article 8 grounds, there is no cross-appeal by the claimant to the effect that his appeal should be allowed in the alternative on Article 8 grounds, as Mr Burrett acknowledged. There is also no cross-appeal against the dismissal of the claim for humanitarian protection. So the issues to be addressed at the resumed hearing are confined to the question of whether the claimant is entitled to relief on international protection grounds (including Articles 2 and 3 ECHR, but excluding humanitarian protection) in respect of his prospective removal to Kabul.

The Hearing to Remake the Decision

24. Pursuant to the directions which I made at the error of law hearing, the claimant's solicitors served a supplementary bundle containing, inter alia: written submissions, an addendum to Dr Giustozzi's original report dated 7 June 2015, an expert report from Dr Liza Schuster dated 5 June 2015 and a letter dated 6 March 2015 from Dr Daud Yaar, Ambassador at the Afghan Embassy in London.

The letter

25. In his letter of 6 March 2015, the Ambassador announced the current stance of the Ministry of Migration and Repatriation Affairs. The Ministry had decided to reconsider the terms of the existing memorandums of understanding through diplomatic channels and had requested partner countries to suspend the deportation of Afghan migrants, "until decided otherwise, where the Ministry could provide the necessary services to returning Afghans". Until that time, the Ministry could not accept responsibility regarding any Afghan deportee.

The report of Dr Schuster

26. In her report Dr Schuster, who is a guest researcher and lecturer at Kabul University, gives an account of a meeting with Minister Balkhi, the Minister for Refugees and Repatriation, on 28 February 2015 in Kabul. According to the minister, he was unwilling to continue operating the current MOUs until new ones were negotiated because the removing countries were breaching conditions: women and children and people who were mentally and physically unwell were being removed, as well as those who could not be returned to their provinces of origin. The minister argued that only of those who could be safely returned to their provinces of origin should be removed. According to him, it was not reasonable to expect Kabul to be able to receive all those who were forcibly returned (especially when they were from other provinces, and/or had been born outside Afghanistan). In the minister's view, only Bamiyan and Panjshir were safe, but the roads to Bamiyan were not. Before leaving, Mr Balkhi asked the four people present to use their contacts to pressurise the Norwegian Government to stop a charter flight due on 15 March and another March flight from the UK.
27. Dr Schuster had since seen documents showing that the British Government had put considerable pressure on the Afghan Government to allow forced removals to continue. There had not however, been any improvements in the security (or employment) situation in Kabul.
28. In her report Dr Schuster goes on to consider the security situation in Kabul. 2014 saw a sharp increase in the frequency of attacks, particularly in Kabul. Aside from the 22 people killed in the 17 January 2014 attack on the Lebanese restaurant, including eight Afghan civilians, there had been at least one attack per week, up to including this week when a BBIED exploded in PD2 killing seven and injuring 36 civilians (TLO News 25 March 2015). The assassination of the chief of staff to the Afghan Chief of Police in Kabul on 9 November 2014 inside the Kabul Police HQ was certainly seen as evidence of the Taliban's capacity to strike at even one of the most secure and fortified sites in Afghanistan, and the inability of the forces to protect themselves, let alone ordinary civilians.
29. Many of Kabul's districts, especially outside the centre, are ethnically segregated, including Pule Charki and Karte Nau, which were both Pashtu districts. Residents of Kabul with whom she has spoken in the last three years have told her that they feel nervous outside their own areas, and taxi drivers driving around the city would express fears for her when dropping her in districts of ethnic groups different to their own.
30. In the last part of the report Dr Schuster addresses the viability of relocating to Kabul for those from outside the city who do not have family in the city. She begins by citing the UNHCR Eligibility Guidelines dated 6 August 2013 as offering guidance on assessing the reasonableness of internal relocation, noting the particular attention must be given to:
 - (i) the availability of traditional support mechanisms, provided by members of the applicant's extended family *or members of his or her ethnic group* (my emphasis);

- (ii) access to shelter in the proposed area of relocation;
 - (iii) the availability of basic infrastructure and access to essential services in the proposed area of relocation, such as sanitation, healthcare and education;
 - (iv) the presence of livelihood opportunities, including access to land for Afghans originating from rural areas; and
 - (v) the scale of internal displacement in the proposed area of relocation.
31. With regard to sub-paragraph (iii), she says that Kabul's population has exploded from 500,000 to 5,000,000+ in the space of ten years. Many of the 5.7 million people who have returned from Iran and Pakistan, and the 6,000,000 IDPs have been displaced inside Afghanistan, have been unable to return to their original homes and a significant number of these have settled around Kabul. Basic infrastructure, including sanitation, education and health, has not kept pace.
 32. With regard to sub-paragraph (iv), interaction between strangers meeting for the first meeting inevitably begins with establishing identity and trying to find common acquaintances or family members. Trust in the Afghanistan has been severely tested through more than three decades of war, and unless and until someone's identity had been established, they will be unable to find somewhere to stay, or someone to give them employment or support. Unless they have access to support networks, they will find it difficult, perhaps impossible, to find livelihood opportunities. While Afghan asylum seekers will undoubtedly have gained valuable skills and experience during their time in the UK, which should qualify them for employment in Kabul, it is unfortunately the case that jobs are mostly given to members of a social network rather than the most qualified person.
 33. A further concern is those returned after spending years in Europe, in particular during formative teenage years, would stand out. Those returned may still speak Dari or Pashtu, but their accents and comportment are different, and they do not have the local knowledge and experience necessary to assess and deal with risk. If they do not have family or friends in Kabul, they will not have the necessary guidance and advice on where to go and how to behave. Those returning as young men without social networks are also vulnerable to recruitment by insurgents. Quoting from a previous article she co-wrote in 2013, for the most part re-integration packages provide something to do until the person in question can leave again. From the research which she conducted, there were two main reasons why those who are forcibly returned to Kabul return to their provinces of origin. The first is where people have absolutely no links to Kabul, and they do not know where to begin looking for accommodation or employment so even if they feel threatened in their home province, they hope to find shelter there until they can find somewhere else to go. The second reason is that it is likely some years have passed since most have seen their families.

The addendum report of Dr Giustozzi

34. In his addendum report, Dr Giustozzi says that whether or not the appellant is from Kabul is immaterial to question whether the Afghan authorities will accept him as a returnee. He is not aware of any particular attempt to return Afghans to Kabul being rejected, but he says there are rumours that some returning Afghans from continental Europe have not been accepted by the immigration authorities at Kabul Airport.
35. The intensity of terrorist attacks in Kabul varies according to the dynamics of the conflict. The peak in the number of attacks was reached in October last year. There was then a lull in November, January. Attacks have since resumed, and occur at a pace of a couple per week. The authorities have tightened security in Kabul and searches for infiltrators and suspect terrorists have intensified. The chances of the claimant being viewed as a suspect are thus now greater than ever. If he was just arrested for questioning, the chance of him being abused or even tortured would be very high. The authorities would expect him to provide information about his family members, their activities and whereabouts. Failure to do so could itself be considered a crime by the authorities.
36. The claimant is still not likely to be at risk from the Taliban in Kabul. The greatest risk to the claimant was going to be from the authorities. A recent UNAMA Report confirmed that arbitrary detention had continued unabated in more recent years. The report confirmed that about 35% of detainees had been tortured.
37. The ability of the authorities to provide protection to individuals like the claimant, assuming they did not arrest him in the first place as a suspect, remained limited. Apart from senior government officials who enjoyed the protection of the police, everybody else had to fend for himself.

Submissions on remaking

38. On behalf of the Secretary of State, Ms Everett submitted that the new evidence relied on by the claimant did not demonstrate that he would be at a real risk of persecution or serious harm on return to Kabul either at the hands of the Taliban or at the hands of the authorities. In reply, Mr Burrett submitted that the country guidance in **PM** was no longer operative. There was a general degree of optimism in 2006, and it was envisaged that international oversight would continue. The deterioration of the security position in Kabul meant that Dr Giustozzi's apprehension of the risk faced by the claimant at the hands of the authorities, given his particular profile, had a solid evidential foundation.

Discussion and Findings on Remaking

39. In international protection claims, the standard of proof is that of real risk or reasonable degree of likelihood. Evidence of matters occurring after the date of decision can be taken into account.

40. Under Paragraph 339K, the fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or serious harm, will be regarded as a serious indicator of the person's well-founded fear of persecution or serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.
41. Under Paragraph 339O, the Secretary of State will not grant asylum if in part of the country of origin a person would not have a well-founded fear of being persecuted, and the person can reasonably be expected to stay in that part of the country. In examining whether a part of the country meets this requirement, the Secretary of State will have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the person.
42. According to Mr Burrett, an earlier report by Dr Schuster, to which she makes reference in her June 2015 report, was part of the evidence which underpinned the decision by the President referred to in paragraph 21 above. Mr Burrett clarified that the President on that occasion granted an interim injunction prohibiting the SSHD from effecting a removal to Kabul of some failed asylum seekers, and that a reported decision was not yet available.
43. In the light of the evidence contained in the supplementary bundle, I infer that the central reason for granting an injunction was the announcement by the Ministry for Refugees and Repatriation that the following categories of person would not be allowed to disembark at Kabul Airport: unaccompanied women and children, those with mental and physical problems, those that are particularly vulnerable and (most controversially from the standpoint of the UK government) "those who come from dangerous provinces": see paragraphs 52 and 53 of the supplementary bundle.
44. Although Kapisa Province is not one of the provinces discussed by Dr Schuster in her report, it is clearly not one of the two provinces which the Afghan Government has pronounced as safe. Accordingly, the claimant *prima facie* falls into the category of a person in respect of whom there is a technical obstacle to an enforced return to his country of origin. Thus, as was agreed by Mr Burrett and Ms Everett, I am being asked to assess the risk on return on a hypothetical basis only.
45. While I accept the security situation in Kabul has deteriorated since **PM** was decided, I am nonetheless not persuaded that the reasons given in **PM** for in effect rejecting Dr Giustozzi's opinion are any less valid today than they were in 2006.
46. Although Dr Giustozzi characterises the recent change of position by the Afghan Government as arising from a perception that the Kabul internal flight alternative is not viable as a safe alternative, this is not in fact correct. This is apparent from the contents of the blog on which Dr Giustozzi bases his claim. Minister Balkhi did not in terms state that Kabul was no longer safe for returnees. What he said was that the security situation in Afghanistan as a whole was not stable, commenting that currently 80% of the country was insecure and unsafe. The implication of Dr Schuster's report is that the 20% of the country which continues to be relatively safe and secure in the estimation of the Minister (and in her own estimation) comprises major cities such as Kabul (where IDPs from rural areas continue to congregate) and

two named provinces. For, despite the deterioration in the security situation in Kabul city, she does not identify this as one of the reasons why internal relocation to Kabul city may not be sustainable in the long-term.

47. The report of Dr Schuster does not lend any support to the proposition that the intensification of Taliban attacks in Kabul has led to increased suspicion of returnees as being Taliban infiltrators. There is passing reference to abuses committed by Afghan local police in the provinces, presumably in one or more of the dangerous provinces, but I can find no mention of any similar abuses in the context of Kabul.
48. The claimant's profile is that he is an ethnic Pashtun who comes from an area of the country which is a known Taliban stronghold. But he fled to the west in order to avoid being recruited by the Taliban, as did his older brother. His father fought for the Taliban and the guest house adjacent to the family home was used by the Taliban as accommodation. The authorities in Kapisa knew about him as a potential Taliban recruit (by virtue of his association with his father, who they killed in an attack on the guest-house), but they did not take any action against him at the time, presumably because of his youth.
49. Mr Burrett submits that there is an undisturbed finding by the judge below that the claimant would be at risk of ill-treatment on return to his home area in Kapisa province from the authorities, as well as from the Taliban, on account of his family's known association with the Taliban. I formally preserved the judge's findings on past persecution. I did not formally preserve the judge's finding that the claimant would be at risk on return from the authorities in Kapisa province. But I accept that the finding was open to the judge for the reasons he gave, and it was not challenged by the SSHD.
50. Nonetheless, it does not thereby follow that the claimant would face a similar risk from the authorities in Kabul. The level of threat posed by the Taliban in Kabul relative to that posed by the Taliban in Kapisa Province is of a different order of magnitude. Another key difference is that the claimant would not be perceived by the authorities as returning to his home area to carry on where his father had left off. The very fact that he had fled to the West and had then chosen not to return to his former home area is more consistent with him continuing to shun the Taliban rather than being a potential recruit. So there is not a solid evidential platform on which to draw the inference that, because Taliban infiltration of Kabul has increased and the security situation in Kabul has deteriorated, greater suspicion would now fall on the claimant on account of his profile or that the questioning and treatment of the claimant by the authorities in Kabul would violate Article 3 ECHR. Accordingly, I find that the claimant has not discharged the burden of proving to the lower standard of proof that he is at a real risk of suffering persecutory ill-treatment or Article 3 ECHR harm on return to Kabul on account of his accepted profile.
51. I have also given consideration to the proposition whether, in the light of the latest evidence, the claimant's relocation to Kabul could be said to be unreasonable and unduly harsh, even if he will be safe. The claimant is now aged 20½, based on his assigned date of birth, and so he is a long way past his assumed age of majority. The

fact that he is still under the supervision of Hounslow Social Services pursuant to Section 24 of the Children (Leaving Care) Act 2000 does not give rise to an inference that he is too immature to cope with having to forge an independent life in Kabul without the assistance of extended family members in Kabul. As the judge recorded at paragraph [36] of his decision, the claimant's personal advisor says there is nothing exceptional about his circumstances. He is living in shared accommodation with other young men.

52. As stated in the refusal letter, the claimant will be able to take advantage of the financial assistance which is attached to voluntary returns, so that he can either continue his education in Kabul or start a business with the assistance of the Refugee Action Choices Scheme.
53. In conclusion, I find that the claimant has not discharged the burden of proving that, having regard to the general circumstances prevailing in Kabul and his personal circumstances, he has a well-founded fear of persecution in Kabul or that he cannot reasonably be expected to stay there. So he does not qualify for recognition as a refugee and, by the same token, he does not qualify for human rights (Articles 2 and 3 ECHR) protection.

Conclusion

The decision of the First-tier Tribunal contained an error of law, and accordingly the decision is set aside and the following decision is substituted:

The claimant's appeal is dismissed on all grounds raised.

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

Unless and until a Tribunal or court directs otherwise, the claimant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the claimant. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge Monson