



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12246/2016

THE IMMIGRATION ACTS

Heard at Field House
On 30 April 2018

Decision & Reasons Promulgated
On 21 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

S M K
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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

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

Representation:

For the Appellant: Mr D Lemer, Counsel, instructed by Wimbledon Solicitors
For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. By a decision of mine promulgated on 26 March 2017, I found the First-tier Tribunal made material errors of law in dismissing the Appellant's appeal. In light of this I deemed it appropriate to set that decision aside. There was no need to remit the case back to the First-tier Tribunal: I was in a position to remake the decision for myself. However that was not possible to do at the time of the error of law hearing. Instead, the matter was listed for a case management hearing on 5 February 2018. At that point it was anticipated that a new country guidance decision on Afghanistan would be promulgated in the relatively near future. As it happens, that decision was in fact promulgated on 23 March and published on 16 April this year as AS (safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC).
2. My error of law decision is annexed to this remake decision.
3. In advance of the hearing before me and in compliance with directions, the Appellant's representatives served a consolidated bundle, indexed and paginated A1-E214. As agreed previously there was no need for further oral evidence. The essential factual matrix in this case is not in dispute and is set out in my error of law decision. I summarise it here:
 - (a) the Appellant originates from the Kana district in Nangarhar Province, Afghanistan;
 - (b) in 2012 the Appellant was abducted by the Taliban and severely ill-treated by them;
 - (c) he duly escaped from that organisation;
 - (d) he left Afghanistan at the age of thirteen;
 - (e) whilst in the United Kingdom he has published a book about his experiences;
 - (f) whilst still a minor in this country he joined the Metropolitan Police Cadets for a time;
 - (g) the Appellant has family members in his home area and a half-brother residing in the United Kingdom.

The hearing before me

4. Following a useful discussion with the representatives the following matters are agreed:
 - (a) Mr Jarvis realistically accepts that in light of the evidence as a whole the Appellant would face a real risk of persecution in his home area;
 - (b) Mr Lemer accepts that the Appellant would not be at risk of persecution or serious harm in Kabul;
 - (c) the appeal is now focused on the protection claim only: Article 8 is not pursued;
 - (d) the core issue is the reasonableness of internal relocation of this Appellant to Kabul.

5. The core issue identified above is to be seen in light of two particular sources: AS and the country report of Mr T Foxley, an undisputed expert on Afghanistan.

The parties' submissions

6. Mr Jarvis emphasised the fact that Mr Foxley's report predates AS. That report must now be seen in light of AS, and numerous aspects of it should be accorded reduced weight. Mr Jarvis directed me to paragraphs 206, 207 and 213 of AS, submitting that in general terms accommodation and employment would be available to returnees, that there was no particular need for them to have family connections in Kabul, and that generally speaking relocation to the capital would not be unduly harsh. Any perceived "westernisation" would not give rise to a risk (paragraph 187). In this case the Appellant would have some form of familial support: he had family members in his home area and a relative living in the United Kingdom, and these two factors would assist him on return. It was noted that a number of Mr Foxley's sources had also been considered by the Upper Tribunal in AS. In relation to the Appellant's age when he left Afghanistan, Mr Jarvis submitted that this was not of itself enough to make relocation unduly harsh. The Appellant did not have any other vulnerabilities such as mental health conditions or physical disabilities. There was no risk of exploitation or destitution. In relation to the Appellant's activities in the United Kingdom the publication of the book and his involvement with police cadets would not place him at risk and would not have a material effect on his ability to reasonably relocate. There was no evidence to suggest that the Appellant's family members would reject him in any way.
7. Mr Lemer relied on his skeleton argument. He submitted that the cumulative effect of the factors listed at paragraph 14(a)-(f) of the skeleton were sufficient to show that it would be unduly harsh for this Appellant to relocate to Kabul. He placed particular reliance on the report from Mr Foxley. It was submitted that the expert report was paying specific regard to the particular circumstances of the Appellant, something that was entirely consistent with the approach set out in AS. In Mr Lemer's view, the key factor in this case was the Appellant's age when he left Afghanistan. In this regard I was referred to paragraphs 230-233 of AS. The Appellant left the country when he was very young, just thirteen. It was emphasised that he did not have any family actually residing in Kabul. The time spent in the United Kingdom was significant both in respect of its length and what the Appellant had done whilst here. Those activities would be enough to set him apart from other returnees. If these details were disclosed to others they may present difficulties for the Appellant in respect of his access to accommodation and/or employment.
8. At the end of the hearing I reserved my decision.

Findings of fact

9. The relevant factual background in this case is not in dispute and I have already set it out at paragraph 3, above.

10. In addition, I find that Mr Foxley is a suitably qualified expert and that his report should be accorded significant weight. Having said that, his report must be viewed in light of AS. That is not to say that there is necessarily any inconsistency between the two materials, but AS does represent country guidance and Mr Lemer has certainly not suggested that I should depart from it in any material way.
11. I find that the Appellant's brother has been supporting him, both emotionally and financially, throughout his time in this country (A15-16 of the bundle). I find that he has undertaken studies and work experience whilst here (A13 and A40-42 of the bundle).

Conclusions on risk

12. First, I conclude that the Appellant would indeed be at risk on return to his home area. Mr Jarvis has rightly conceded this point and in light of the factual findings and Dr Foxley's report at C8-C10 and C18-C20 of the Appellant's bundle, with reference to paragraph 339K of the Immigration Rules, it is clear enough that there would be a risk to the Appellant.
13. Second, I conclude that the Appellant would not be at risk of persecution or serious harm in Kabul. Mr Lemer has conceded this issue and in my view was right to have done so. Having regard to the country guidance set out in paragraphs 176-185 of AS and the report of Mr Foxley at C22-C23 and C25-C26 of the Appellant's bundle, there is no reasonable likelihood that the Taliban would wish to or be able to track the Appellant down in Kabul. Further, whilst I note what Mr Foxley says at paragraph 64 of his report, it is not been argued before me that there is in fact a real risk in respect of any perceived westernisation, and I conclude that there is not (see paragraph 187 of AS). Finally, it has not been suggested that the Appellant would be at risk of exploitation or destitution to the extent that that would allow him to succeed on either of these freestanding bases.

Conclusions on internal relocation

14. I now turn to the core issue in the appeal, namely whether it would be unduly harsh for this particular Appellant to relocate to Kabul.

General points

15. In undertaking this evaluative assessment I direct myself as follows. I must take all relevant circumstances into account, including those pertaining to Afghanistan in general, the situation in Kabul (that being the specific place of proposed relocation), and, importantly, the Appellant's own characteristics. The circumstances are to be looked at individually and cumulatively. Further, the Appellant need not show that his circumstances in the place of relocation would give rise to ill-treatment contrary to Article 3 ECHR.

16. Turning to the conclusions are set out in AS, I have had particular regard to everything said by the panel in paragraphs 189-235. For the sake of brevity and ease of reference, I set out the relevant part of the overall conclusions at paragraph 241 here:

“Internal relocation to Kabul

(ii) Having regard to the security and humanitarian situation in Kabul as well as the difficulties faced by the population living there (primarily the urban poor but also IDPs and other returnees, which are not dissimilar to the conditions faced throughout may other parts of Afghanistan); it will not, in general be unreasonable or unduly harsh for a single adult male in good health to relocate to Kabul even if he does not have any specific connections or support network in Kabul.

(iii) However, the particular circumstances of an individual applicant must be taken into account in the context of conditions in the place of relocation, including a person’s age, nature and quality of support network/connections with Kabul/Afghanistan, their physical and mental health, and their language, education and vocational skills when determining whether a person falls within the general position set out above.

(iv) A person with a support network or specific connections in Kabul is likely to be in a more advantageous position on return, which may counter a particular vulnerability of an individual on return.

(v) Although Kabul suffered the highest number of civilian casualties (in the latest UNAMA figures from 2017) and the number of security incidents is increasing, the proportion of the population directly affected by the security situation is tiny. The current security situation in Kabul is not at such a level as to render internal relocation unreasonable or unduly harsh.”

Specific factors in this Appellant's case

17. The Appellant is a single adult male who is in good health. These simple facts clearly points towards a conclusion that internal relocation to Kabul would, on the face of it, be reasonable. I take into account the fact that the Appellant is educated and has some work experience from his time in this country. It is clear that in principle he would be able to undertake a variety of jobs.
18. The Appellant does not have a family or pre-existing social support network in Kabul itself. This factor counts in his favour. Having said that, I have considered the analysis and conclusions in paragraphs 204-225 of AS. The essential outcome is that a support network (whether familial or social) is not an essential requirement in order for a single male in good health relocating to Kabul to access accommodation or employment there. As recognised in paragraph 241(iv) of AS, the existence of a support network would be advantageous to a returnee. However, its absence will not generally be sufficient to render relocation unduly harsh.

19. I have taken Mr Foxley's report into account as regards the issue of support mechanisms and access to employment and accommodation (see in particular C32-C34 of the Appellant's bundle). Whilst I am placing significant weight upon the report in general terms, as mentioned previously, I am also assessing its value in light of AS. In respect of the issue in hand, the Upper Tribunal had a good deal more specific evidence before it than did Mr Foxley. To the extent that there is any conflict between his report on this issue and the conclusions drawn in AS, and with all due respect to Mr Foxley, I prefer the latter to the former.
20. I take into account the fact that the Appellant does have family in his home area and a brother residing in the United Kingdom. I do not have specific evidence before me as to the financial circumstances of the family in Afghanistan, and it may be somewhat speculative on my part to conclude that they could in fact financially support the Appellant in Kabul to any meaningful extent. On the other hand, there is no evidence to suggest that they would not be able to assist in some way. In any event, it is much more likely that the Appellant's brother in this country would be in a position to assist the Appellant. I have found that he has been financially supporting the Appellant throughout his time in the United Kingdom, and there is no reason to suppose that support would cease if the Appellant were to return to Kabul. It also appears that there is a cousin in this country who would also be in a position to offer some support (see A19 of the Appellant's bundle).
21. Taking the above into account, I conclude that the absence of a support network in Kabul itself does not, of itself, render relocation unduly harsh. Indeed, the real possibility of an external support network based in the United Kingdom (if not in Afghanistan as well) points towards a more reasonable establishment in the capital than might otherwise be the case. The Appellant's young age when he left the country is of course relevant to this issue, as it is to others (see below), but when considered in the round it does not in my view make what would otherwise be reasonable thereby unreasonable.
22. The Appellant speaks Pashto, one of the main languages spoken in Afghanistan in general, and Kabul in particular. This places him in a better position than an individual who did not (see paragraph 235 of AS).
23. A point raised at the hearing before me was that the issue of westernisation had not been addressed by the Upper Tribunal in AS in the context of internal relocation as opposed to risk. Mr Lemer suggested that the perception of the Appellant as a westernised individual might cause difficulties in respect of access to accommodation and/or employment. Having reflected on this, I do not agree. Whilst it is true that the specific topic of westernisation is not mentioned in the section on internal relocation, it is clearly considered in the context of risk on return (paragraph 187). Given the detailed analysis afforded to all the issues before the Upper Tribunal, I take the view that if westernisation was indeed a relevant factor in the overall assessment of internal relocation, it would have been specifically dealt with as such. Further, in the present case there has been no argument that westernisation presents a specific risk to the Appellant and I conclude that this issue does not have the residual effect of making

relocation unduly harsh, even bearing in mind the Appellant's young age when he left Afghanistan.

24. Part of the Appellant's history in the United Kingdom is that he has produced a book of his experiences and was a member of the Metropolitan Police cadets for a time. It is accepted that these facts do not present a risk to the Appellant on return. I conclude that even if the remote possibility of them coming to light were to materialise, this would not have a material bearing on the question of whether it would be unduly harsh to relocate.
25. I have taken the Appellant's past experiences into account, including the fact that these occurred when he was only a young adolescent. Although he would not be returning to his home area, it is a fact that he has gone through traumatic events there. I hope that I can at least try to appreciate the sense of anxiety that he feels in respect of the prospect of return, but I must also bear in mind the fact that there has now been a judicial determination on the question of risk in Kabul, and that the Appellant will be made fully aware of this. There is also the fact that the Appellant has not suffered from any on-going mental health problems as result of his past experiences.
26. The Appellant's age is an important factor. The Appellant left Afghanistan at the age of thirteen and has been away from the country for a fairly lengthy period. Mr Lemer has, understandably, placed significant emphasis upon this point. Age is a factor dealt with at paragraphs 231-232 of AS. The Appellant is now aged nineteen years and six months. I fully appreciate that there is no "bright line" between minority and majority, but I do take into account fact that the Appellant is now some way beyond his attainment of the latter (at least in terms of the way in which western societies view this issue).
27. The more important aspect of age is that addressed by the Upper Tribunal in paragraph 232, namely the issue of when the returnee left Afghanistan:

"We also consider the age at which a person left Afghanistan to be relevant as to whether this included their formative years. It is reasonable to infer that the older a person is when they leave, the more likely they are to be familiar with, for example, employment opportunities and living independently."
28. The Appellant was only thirteen years old when he left and had not worked or lived independently from his family prior to departure. He has not lived in Kabul at any time. A fair amount of his formative years have been spent in the United Kingdom. These basic facts combine to identify significant individual characteristics bearing on the question of whether internal relocation would be unduly harsh. They clearly weigh in the Appellant's favour.
29. Taking these important characteristics fully into account, both as an individual factor and on a cumulative basis affecting all other matters that I have considered, I nonetheless conclude that it would not be unduly harsh for this particular Appellant to relocate in Kabul. In essence, the cumulative weight of the factors pointing towards the availability of the relocation option (even once those factors are 'adjusted' to take account of the Appellant's age when he left the country) is not sufficiently countered by the specific age-related issue. Establishment in Kabul will no doubt be difficult and

the Appellant's age when he left Afghanistan will of course be a constituent part of this that difficulty. However, he is a young man with no specific vulnerabilities relating to health or linguistic ability. His activities in the United Kingdom will not cause him material problems on return. In fact, he has obtained certain amount of educational and work-related experience whilst here, all of which would in my view assist him. In my judgment these beneficial matters would not be annulled by the fact that the Appellant left when he was thirteen and has been away for a substantial period. Further, he will have the support of at least one family member residing in this country. That is not of course the same as having a support network in Kabul itself, but for reasons set out previously this does not necessarily close off the option of relocation. In my judgment the general proposition set out in AS that internal relocation would not be unduly harsh has not been displaced by the particular characteristics of this Appellant.

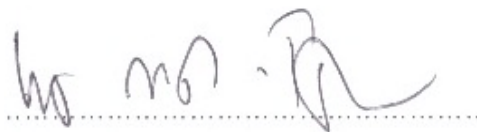
30. In light of everything I have said above, I would add that I specifically reject the submissions made in paragraph 14(c) and (d) of Mr Lemer's skeleton: the Appellant is not at risk of exploitation and destitution in Kabul and he would not face insurmountable difficulties in finding employment and/or accommodation.
31. In summary, although the Appellant is at risk in his home area, it would not be unduly harsh for him to relocate to Kabul. It follows that his appeal must be dismissed.

Notice of decision

The decision of the First-tier Tribunal contains errors of law and I set it aside.

I remake the decision by dismissing the Appellant's appeal on all grounds.

The Respondent's refusal of the Appellant's protection and human rights claims is not contrary to the United Kingdom's international obligations, nor is it unlawful under section 6 of the Human Rights Act 1998.



Signed

Date: 12 May 2018

Deputy Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT

No fee was paid or payable and so no fee award can be made.

ANNEX: ERROR OF LAW DECISION



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

Appeal Number: PA/12246/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 28 April 2017**

Decision & Reasons Promulgated

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Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**S M K
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Lemer, Counsel, instructed by Wimbledon Solicitors
(Balham High Road)
For the Respondent: Mr S Staunton, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge P-J S White (the judge), promulgated on 8 February 2017, in which he dismissed the Appellant's appeal on all grounds.
2. The Appellant, a national of Afghanistan, came to the United Kingdom in June of 2012 and made an asylum claim shortly thereafter. This was initially refused by the Respondent, but the Appellant was granted discretionary leave from 2014 to 2016 based upon his age (he was born in 1998). In due course the Appellant made an application for further leave to remain. This application included protection issues. There were a number of strands to his case, including the continued reliance upon the initial claim made in 2012, namely that he had been forcibly taken for recruitment by the Taliban, ill-treated by them and then had escaped from them before coming to the United Kingdom. Significantly, this aspect of his claim has been accepted by the Respondent throughout. In addition, the Appellant asserted that certain other matters relating to relatives and his circumstances in the United Kingdom gave rise to risks on return to Afghanistan. These additional elements were rejected by the Respondent.

The judge's decision

3. In, for the most part, a thorough and very careful decision, the judge sets out the evidence and goes to some lengths to set out findings and reasons over the course of some seven pages. Without going into great detail the judge was clearly unimpressed by several aspects of the Appellant's own evidence relating to the additional threads of his protection claim. The judge was also less than impressed with an expert report from Mr Zadeh: he ultimately concludes that this report was of little assistance to the assessment of risk on return. Notwithstanding the adverse findings, at paragraph 41 the judge confirms that the core 2012 claim (referred to earlier) was accepted, both by the Respondent and himself. The additional aspects of the claim were deemed to be untrue embellishments. At paragraph 42 the judge states as follows:-

"In those circumstances I do not accept that the Appellant is at any risk from the government or from his father's cousins. I accept that he was, in 2012, in genuine fear of the Taliban, and it seems likely that he would, certainly in his home area, have been at some risk from them if returned, it being likely that they would seek either to renew his recruitment or to harm him, as punishment to him and a warning to others, because of his escape. It seems to me far less clear, even to the low standard appropriate, that that risk would still be present in 2017."

4. At paragraph 43 the judge goes on to consider what is in essence an alternative conclusion on the basis that there was indeed a risk from the Taliban in the home area. He finds that the Appellant could internally relocate to Kabul (which was in fact the point of arrival back to Afghanistan). The judge makes reference to the Respondent's Country Information Guidance (CIG), but concludes that the Appellant did not fall into the risk category of those perceived to be supportive of the Government or the international community. In light of this and the particular characteristics of the Appellant, the judge concludes that there would be a sufficiency of protection in Kabul

and that relocation would be a reasonable option. He then goes on to consider Article 8 but rejects this aspect of the Appellant's case.

The grounds of appeal and grant of permission

5. There are two grounds of appeal. The first relates to paragraph 339K of the Immigration Rules. It is said that this provision, which has a bearing on future risk with reference to past persecution, had not been considered by the judge and that the omission was a material error of law. It said that the judge should have factored in this important provision when assessing whether there would be a risk now, both in the home area and in any place of relocation. Reference is also made to the UNHCR Guidelines of 2016. The second ground relates to the judge's treatment of the expert report. In essence it said that the judge rejects the expert report unjustifiably.
6. Permission to appeal was granted by First-tier Tribunal Judge Saffer on 6 March 2017.

The hearing before me

7. Mr Lemer relied on the grounds of appeal. In respect of the paragraph 339K issue, he submitted that the judge has simply not referred to it or applied it in substance. There was an error in respect of the assessment on the risk on return to the home area for that reason. In respect of the alternative conclusion at paragraph 43, Mr Lemer submitted that the 339K issue should also have been applied to that scenario. In addition, he submitted that the judge had failed to have proper regard to the UNHCR Guidelines, which were before him. It is said that he failed to consider the question of whether the Appellant's actions in 2012 (escaping from the Taliban) would be perceived by that brutal organisation as imputed support for the Afghani Government. It was at the very least arguable that the UNHCR Guidelines cited in the grounds of appeal and to which the judge was referred at the hearing did in fact apply to this Appellant. The question then arose, submitted Mr Lemer, as to whether the Taliban would want to pursue this Appellant in Kabul if they or anyone connected to them should become aware of his presence there. Mr Lemer submitted that the judge had failed to ask himself that question. The failure was material because the Appellant had an adverse history with the Taliban, that the Taliban could potentially track down and harm people in Kabul, and that the Appellant's activities in the United Kingdom, in particular his publication of a book in which adverse comments are made about the Taliban could cumulatively create an adverse profile and be a reason for the Taliban to seek to harm him even now. In respect of the expert report, Mr Lemer referred me to paragraphs 19 and 20 thereof and to paragraphs 37 and 38 of the judge's decision. He submitted, in particular in relation to paragraph 38 of the decision, that there were insufficient reasons for rejecting the report.
8. Mr Staunton accepted that 339K had not been applied by the judge, but he questioned whether this was a material error. In relation to the publication of the book, he referred me to paragraph 32 of the judge's decision.

Decision on error of law

9. This has not been an easy case to decide. The judge has produced what in most respects is a thorough and well-reasoned decision and he is to be commended for this. However, by a fairly narrow margin I have concluded that there are material errors of law in the decision specifically relating to the paragraph 339K issue which in turn links to the consideration of the UNHCR Guidelines and the Appellant's potential risk profile on return to Afghanistan. My reasons for this conclusion are as follows.
10. First, I make it very clear, and indeed Mr Lemer has accepted, that the judge's adverse findings as to the other elements of the Appellant's claim are perfectly sound. Indeed, they have not been challenged in the grounds. The judge was, in my view, perfectly entitled to regard these additional elements as being untrue embellishments.
11. Second, notwithstanding that, there was a core element of the Appellant's account that has been accepted by the Respondent throughout, and this acceptance was reiterated by the judge himself. This element was the Appellant's experiences with the Taliban prior to his departure from Afghanistan in 2012. This core issue had to be considered appropriately in respect of any risk on return to Afghanistan in 2017.
12. Third, in paragraph 42 the judge accepts that back in 2012 there would have been a risk from the Taliban, at least in the Appellant's home area. The judge goes on to say that it was less clear that any risk would exist now. The expression "far less clear" is, with respect, itself unclear. If I assume that it amounts to a rejection of there being a real risk from the Taliban in the home area for present purposes, there is an error in the judge's approach. That error is a failure to consider the effect of paragraph 339K of the Rules. Paragraph 339K does not lower the standard of proof, but it is a relevant factor in assessing risk where there has been an acceptance of past persecution: were it otherwise the provision would have no utility. Paragraph 339K has not been referred to in terms by the judge, but more importantly, its substance has not been applied in assessing the risk on return.
13. Fourth, the question then arises as to whether this error is material. This question has to be answered in the context of the judge's alternative conclusions set out in paragraph 43.
14. Fifth, in respect of the Appellant's home area the error is, in my view, material. The margin of materiality may be narrow given the passage of time and the Appellant's age when he left Afghanistan. Nonetheless, if the Appellant were to return to the same area in which the Taliban forcibly took him and persecuted him in the past, the need to factor in the serious indication of future risk (as per paragraph 339K) must be relevant. Thus there is a material error of law in this regard.
15. Sixth, the failure to consider paragraph 339K must also relate to an assessment of risk in Kabul or the viability of internal relocation to that city.
16. Seventh, the adverse profile of the Appellant to which paragraph 339K would relate needed to be addressed in light of relevant evidence before the judge. This included the UNHCR Guidelines of 2016. The judge in effect concluded that the Respondent's CIG risk category did not apply to this Appellant. However I am satisfied that this was

a misconception on the judge's part insofar as the Appellant's past history with the Taliban could arguably have given rise to the perception on their part that he was against them and therefore in favour of the Afghani Government. In other words, the Appellant's profile *might* include a perceived support for the Afghan authorities. This in turn would potentially place the Appellant into a risk category. There is, as Mr Lemer pointed out, country information which suggests that the Taliban have the capability of tracking people down in Kabul or discovering their whereabouts and taking action against them. Now of course, that is not to say that any and everyone with any sort of an adverse history with the Taliban would be at risk for that reason. All cases are by their nature fact-sensitive. The difficulty with the judge's conclusions is that the question as to whether the Taliban would wish harm to this particular Appellant, even in a place of relocation, has not been addressed in light of the paragraph 339K issue and the Appellant's potential profile on return. There is potentially an additional factor here, namely the Appellant's publication of a book which, it is accepted by the Respondent, exists and can be found by a cursory search of the internet. Whilst not a stand alone risk factor, this might be something that would enhance an adverse profile in the eyes of the Taliban, given the contents of the book. Whilst I have regard to paragraph 32 of the judge's decision, the existence of the book is potentially a relevant factor when assessing risk in the round.

17. Eighth, I appreciate that paragraph 339K did not seem to have been expressly drawn to the judge's attention and I have viewed Mr Lemer's challenge in light of that. However it is right to say that the core 2012 claim has been accepted throughout and that claim and the acceptance thereof and included past persecution, therefore the potential application of 339K was an obvious point.
18. Ninth, I have sympathy with the judge in this particular case. The Appellant had clearly fabricated elements of his overall case and there was much for the judge to disentangle when setting out his findings and conclusions. It may have been these untrue elements of the case which has diverted the judge's attention from the core 2012 account when assessing risk on return.
19. Tenth, as I have mentioned already, the materiality of the judge's errors may be fairly marginal, given the facts of the case and the passage of time. Nonetheless, they do meet the appropriate threshold.
20. Eleventh, in respect of the expert report I conclude that the judge has not materially erred in his assessment thereof. The judge goes into detail in respect of the report (see paragraphs 35 to 40). The fact that the author's overall expertise was not challenged does not, of course, mean that the judge was bound to have placed significant weight upon any and all of his evidence. In my view the criticisms of the report set out in these paragraphs were open to the judge.
21. In respect of the particular complaints raised in the grounds of appeal I would say the following. The findings and reasons need to be looked at in the round and there are elements of the criticisms which are not challenged in the grounds. Further, I note that the opinion expressed in paragraph 19 of the report appears to be based on the author's anecdotal experience as an interpreter for what he described as "thousands of Afghani asylum seekers" in Home Office or police interviews. To my mind that is a less than

satisfactory evidential basis for an opinion of the type set out in paragraph 19 of the report. The judge was entitled to, in essence, reach that same conclusion.

22. In respect of paragraph 20 of the report I note that the terminology used by the author includes the words "possible", "many" and "often" and that overall what is said therein in respect of the attitude of Afghans to those who might be seen as associated with the British Government is couched in uncertain terms. I appreciate that experts do not always have to have independent sources for their opinions, but to my mind it is difficult to discern on what basis Mr Zadeh was founding the view set out in that paragraph 20. In any event, the judge's overall conclusions on the report were open to him and thus his conclusion that the report offered little assistance when assessing the risk on return was one open to the judge in all the circumstances.
23. In light of the above I set aside the judge's decision.

Disposal

24. I have considered what should happen to this appeal now. In my view it should be retained in the Upper Tribunal. This is because the scope of the appeal is fairly narrow. The adverse findings made by the judge in respect of what he describes as the embellishments to the original account have not been challenged in the grounds of appeal and they were, as I have said previously, all open to the judge. The core issue here relates to the 2012 claim, namely that the Appellant was forcibly taken by the Taliban, ill-treated and then escaped. In addition, the Appellant's publication of his book online is accepted by the Respondent, as was his joining of the Metropolitan Police Cadets, at least up until the age of eighteen. In light of this fairly limited factual matrix the risk on return can be assessed by way of country information case law and expert evidence. There is no reason for this case to be remitted to the First-tier Tribunal and therefore I retain it in the Upper Tribunal.
25. I am adjourning the appeal for a resumed hearing before me in due course. The reason I am adjourning it rather than remaking on the evidence now before me is that I am persuaded by Mr Lemer that additional relevant expert evidence will be sought. I had some reservations as to whether any further expert evidence would be of real assistance to me. However in light of what is now the clear factual picture relating to this Appellant, a succinct expert report may be of value and for that reason I will give the Appellant an opportunity to adduce it. One could not have been provided thus far because the Appellant is publicly funded and it would not have been possible for his solicitors to have acquired the necessary funds prior to my decision on error of law. In light of this, I will set out relevant directions below.

Notice of Decision

The decision of the First-tier Tribunal contained material errors of law. I therefore set it aside.

This appeal is to be retained in the Upper Tribunal.

I adjourn the appeal for a resumed hearing in the Upper Tribunal to be held in due course.

Directions to the Parties

1. The resumed hearing will be concerned with the following core factual matters:-
 - (a) The Appellant was in fact forcibly taken by the Taliban in 2012.
 - (b) He was severely ill-treated by them.
 - (c) He escaped from the Taliban.
 - (d) In the United Kingdom he has published a book which can be searched for and located online.
 - (e) He joined the Metropolitan Police Cadets and ceased membership when he turned 18 years of age.
 - (f) His home area is in Kama District in Nangahar Province of Afghanistan.
2. The legal issues to be addressed at the resumed hearing are whether or not the Appellant is at risk in his home area, whether or not he is at risk in Kabul, whether or not Kabul represents a viable place of internal relocation to this Appellant.
3. A further expert report addressing the particular factual matrix of this case would be of assistance to the Upper Tribunal in assessing risk on return. Any such report must be focused on the core issues in the case.
4. Any further expert report is to be filed with the Upper Tribunal and served on the Respondent no later than fourteen working days before the next hearing.
5. No Article 15(c) or Article 8 arguments are being advanced by the Appellant.
6. The Appellant's representatives are to provide the Upper Tribunal and Respondent with a skeleton argument, and this shall be filed with the Upper Tribunal and served on the Respondent no later than seven working days before the next hearing.