



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02756/2017

THE IMMIGRATION ACTS

Heard at Newport
On 5 October 2018

Decision & Reasons Promulgated
On 19 February 2019

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

AK
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs L Gardner, Counsel, instructed by Migrant Legal Project
(Cardiff)

For the Respondent: Mr I Richards, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Afghanistan assessed as being born in January 2002. In a decision sent on 6 June 2017 Judge Ferguson of the First-tier Tribunal dismissed his appeal against the decision made by the respondent on 3 March 2017 refusing to grant him international protection. Because the respondent considered that adequate reception arrangements could not be established in the appellant's case, he was granted limited leave to remain until he was 17½, expiring on 1 July 2019. The basis

of his asylum claim (and “upgrade” appeal) was that he faced a real risk of forcible recruitment by the Taliban who had already killed his father (his father was said to have been working for the government). Like the respondent, the judge did not find his claim credible.

2. Following a hearing on 22 March 2018. I issued an error of law decision sent on 1 June 2018. I found first of all that the appellant’s grounds ((3) and (4), which challenged the judge’s adverse credibility findings, were not made out. I stated:

“5. I am not persuaded that the third and fourth grounds are made out. The judge made allowances for the fact that the appellant was a minor and that in consequence was entitled to a liberal application of the benefit of the doubt (paragraph 17). The judge clearly considered his claim in the context of the evidence as a whole and attached significant weight to the reports of Mr Tim Foxley and Dr Giustozzi (who found that in the light of what was known about country conditions his account was plausible). It was open to the judge to conclude that the appellant’s account was nevertheless not credible, in view of significant inconsistencies and lack of detail – findings which were not as such disputed in the grounds of appeal.”

3. However, I went on to find that the appellant’s ground (1) (which challenged the viability of the judge’s treatment of whether there would be adequate reception arrangements for the appellant) and ground (2) (which contended that the judge failed to consider the evidence of the social worker and foster carer insofar as it highlighted that he had psychological problems and was vulnerable) were made out. I stated in para 6 that:

“... The judge took as her starting point the respondent’s view that it had not been established that there would be adequate reception arrangements for the appellant on return. Whilst some of the remarks made by the judge suggested the appellant might still have family in Afghanistan, the judge failed to make any clear findings on this issue and on whether, even if the appellant had family, they would be able to protect him on his return. Given that the judge accepted that the appellant had PTSD and given that the judge did not reject the evidence of his social worker and foster carer, it was also necessary for the judge to assess risk on return to the appellant as a person whose vulnerability might place him in the same position as an unattended child.”

4. The appellant’s grounds of appeal had referred to the appellant’s risk as a child under the country guidance case law, most notably **AA (unattended children) Afghanistan** CG [2012] UKUT 16.

5. At para 8 I then stated:

“8. Given my conclusion, however, that the judge’s adverse credibility findings are free of legal error, these can be preserved. In such circumstances, I consider that it would be inappropriate to remit the case to the FtT. It will be retained in the Upper Tribunal for a further hearing. This hearing will be fixed for Newport, timed for 1 hour, unless either party makes a specific application for a different venue or time frame. In light of my above analysis it will be clear that the principal task of the judge at the next hearing will be to make findings of fact as regards the appellant’s likely

family circumstances in Afghanistan and the capacity of any family members to assist the appellant on return. It is possible that by the date of the resumed hearing there will be fresh UT country guidance on conditions in Afghanistan.”

6. A resumed hearing took place in Newport on 5 October 2018. As was the case at the original hearing, the appellant did not give evidence, following a medical report stating that he would have difficulties as a witness. I first heard evidence from the appellant’s carer, Mrs Brady. She said that the appellant was very stressed by the ongoing appeal proceedings. He was doing well in his school work at GCSE level and took part in sports. She said that because of the stresses he was experiencing he would not make it on his own without her family’s support. He had trouble sleeping and was tired in the morning. He had gone to the point of banging his head. He suffered from migraines. He had medication for these. She had helped him get in touch with Red Cross and had given him a photo of himself to give them, but she was not present at the Red Cross interviews. Her understanding was that the appellant’s brother and sister and father had been killed in Afghanistan but he still had a mother alive. He also had a couple of uncles. So far as she knew the appellant has not had any contact with his mother or other relatives. She was not aware he had said in his asylum interview that he had had contact with his mother when in Greece/Turkey. He had had mental health counselling last year, around September-October for 10 weeks. In terms of his life at home, his personal hygiene was good, he helped with cooking and washing up etc. and he helped around the house. He did his homework. Asked by Mrs Gardner how he would manage if left on his own, she said she did not think he would get on with anything.
7. I then heard submissions from the parties.
8. Mr Howells submitted that the respondent accepted that the appellant could demonstrate a Refugee Convention reason linked to membership of particular social group by virtue of his age (he cited LQ ([2008] UKAIT 00005) , but that was not enough on its own to qualify him as a refugee. The adverse credibility findings of the FtT had been preserved and hence the only remaining issue concerned whether there would be adequate reception arrangements for the appellant on return. That was not the case at the time of the respondent’s decision; but I had to assess this matter as at the date of hearing. In the respondent’s view, the appellant had failed to show that he would lack family support. Although he claimed to have lost all contact with his family since phoning his mother whilst in Greece and/or Turkey, that was not reasonably likely to be the case. The fact that his foster carer was unaware that he had contacted his mother in 2016 added to the doubts about what was the true situation. The appellant had only recently (starting on 24 February 2017) sought help from the Red Cross with family tracing even though he had been in the UK since 2016. On his own evidence, he left behind several relatives, a mother and a brother and sister and some uncles. As regards the appellant’s mental health, although he has been described as a vulnerable person, he has not been prescribed medication for his mental health; his only medication is for migraine. He has not had any mental health therapy since 2017. In any event there were mental health facilities that would be available to him in Kabul.

9. As regards the appellant's home area, Mr Howells submitted that there was no evidence to suggest it was under the control of the Taliban and it was relatively close to Kabul.
10. Mrs Gardner submitted that the balance of the evidence indicated that the appellant had lost contact with his family in Afghanistan. He had last had contact with his mother when in Greece and he had been separated from his uncle en route. The appellant had formed a close bond with Mrs Brady and her partner and her evidence that to her knowledge he had not had any contact with his mother or other relatives since he began living with them was very significant, as she could be expected to know if he had. The respondent had previously accepted that there were no adequate reception arrangements for the appellant, so that meant they must previously have been satisfied he would not receive family support on return. Although the appellant had only sought Red Cross help relatively recently, he had been trying and engaging and providing relevant and correct information.
11. Accordingly, submitted Mrs Gardner, I should view the appellant as an unattended child and able to benefit from the country guidance in AA, which has not been displaced by subsequent country guidance cases.
12. In addition to being an unattended child the appellant should, she submitted, be regarded as someone at added risk of exploitation due to his vulnerability. The social work letter described him as a "client of particular vulnerability". This evidence chimed with that of Mrs Brady in making clear that he is not able to do things on his own. As regards mental health facilities in Afghanistan, the background country evidence at best demonstrated that such facilities were available in Kabul, but the appellant's home area was outside Kabul. The respondent's submission did not address the accessibility of such facilities to the appellant.
13. There was also an issue in the appellant's case of whether he would be able to transit safely from Kabul to his home area. There were references in the background country information that cast doubt on that.
14. At the end of the hearing I raised with Mr Howells the question of whether the respondent had initiated family tracing inquiries in the appellant's case. He said he was unable to shed any light.
15. On 9 October 2018, I issued Further Directions designed to elicit from the respondent whether and when it was likely family tracing inquiries would be taken in respect of the appellant pursuant to regulation 6 of the Asylum Seekers Reception Conditions Regulation 2005 (Article 19(3) of Directive 2003/9/EC) and to obtain from the appellant a statement setting out what details he furnished to the Red Cross as regards his family members in Afghanistan and if possible with a confirmatory letter regarding those details from the Red Cross and to produce evidence that he has continued to use best endeavours to obtain an answer from Red Cross/the International Family Training Service (IFT) as regards his family members in Afghanistan, particularly bearing in mind that he first sought the help of Red Cross over 19 months ago (on 24 February 2017).

16. On 6 December 2018 the respondent sent its response regarding family tracing in Afghanistan. The response explained that in February 2016 the British Embassy in Kabul confirmed that it did not have the resources or the geographical capability to carry out family tracing in the field. The respondent had granted the appellant leave as an unaccompanied asylum-seeking child in March 2017 on the basis that his family could not be traced at that specific time. He had not provided contact details and family tracing was not initiated as a result. However, in response to my directions, it had been able to obtain from the Afghan Identity Document Checking Unit (IDCU) a report relating to the appellant. This report, dated 2 December 2018, stated that the information contained had been obtained during a site visit carried out by the IDCU and querying of residents of Cheen Zarai village of Hisarak district of Nangarhar province regarding the family tracing of [the appellant's full name]. There then follows a text from someone called Badi Khan giving his identity document details and contact number and stating that he is a resident of Cheen Zaye village of Hisarak district of Nangarhar province and is the appellant's father's uncle. The text states that "I...confirm that [the appellant] son of Almart Khana Son of Mohammad Sadiq is the resident of this village, his family is living in this village and the mentioned area is under the control of the Taliban." There then follows a section headed "Information on Relatives" which lists the names of one brother, one, sister and a mother. Next to the name of his father is written "Deceased".
17. On 7 December 2018 the appellant's representatives sent a letter stating that they were in receipt of the Home Office response and attachments and wished to submit further documents in the form of an additional statement from the appellant dated 6 December 2018, a Red Cross file received 6 December 2018 and a Reuters report of 8 February 2017 noting that the Red Cross had suspended Afghanistan operations after six aid workers were killed.
18. The covering letter noted that the appellant had now given his photograph to help the Red Cross inquiries and has requested Red Cross to start work again on his case now they had resumed working again in Afghanistan.
19. The appellant's representatives stated that they had taken this new statement from the appellant on the morning of 6 December 2018 and prior to receiving the Home Office response and wished therefore to request a variation of directions to include:

"Further clarification from the Home Office regarding the document they have provided. There is information missing or not clear from the verification report.

The credentials and background of Badi Khan. It is not clear from the information who is Badir Khan, which organisation he works for and how he was able to confirm this information and to whom he has spoken. There is not date of when this information was obtained, only the date of the report (2/12/2018).

Which person from IDCU visited the village (along with his credentials), the date of this visit to the village, who he has spoken to in the village, which information he obtained.

Is the village Cheen Zarai or Cheen Zahyed. [the appellant] said he lived in Sunzai.

The verification report also states that “[the appellant] ...is the resident of this village.” We would be grateful for further information from the Home Office regarding the methodology of gaining this information as [the appellant] is not resident of the village at this time as he is in the UK. There is no clear indication of the timelines.

That on receipt of the above clarifications, the Appellant has adequate time to respond and provide comments.

Once clarifications have been received and the Appellant has been able to respond that the case is listed for another oral hearing. The information from the Home Office purports to indicate the details of [the appellant’s] mother, brother and sister and the Red Cross have not been able to trace the Appellant’s family to date.”

20. The additional witness statement from the appellant dated 6 December 2018 states that when he had his first two meeting with the Red Cross in 2017 he had told them he did not want them to find his family as he was worried about their safety. They had given him a timeframe “that maybe the situation would be better in the future and maybe they would start looking again”. He said he had given the Red Cross his mother’s name, his father’s name (even though he was deceased) and his brother’s and sister’s names. He also gave them a photo to help them with tracing his family members. They had told him they had an office in Afghanistan and would put his photo there so that if any of his family went there they would be able to recognise him. The last time he had seen the Red Cross he had drawn a map of the village. He had now seen Red Cross three or four times. Red Cross had told him they would go to his village and he was now waiting to hear.
21. On 10 December 2018 I replied to the parties saying that I was not minded to vary my directions as the appellant’s request amounted to one for further and better particulars and in any event, did not explain what position the appellant takes regarding the IDCU dated 2 December 2018. I stated that:

“On the face of it the details obtained in relation to the appellant’s father (“deceased”) and mother appear to match those provided by the appellant to the Home Office. The only difference concerns the name of the village (the appellant having stated in his given particulars to the Home Office that his village was “Sunzai” whereas the IDCU refers to “Cheen Zaye”). Without further explanation from the MLP as to whether it is disputed that the IDCU particulars are incorrect or related to another person, I see no justification for directing the respondent to take any further action.

The only new direction I would make is that by end of December 2018 both parties submit to the UT (FAO Dr Storey) short supplementary submissions as to what significance I should attach to the further materials now before me as a result of my previous directions.

At this stage I see no need for a further oral hearing and will proceed to determine the appeal on the basis of what is before me (including replies to my new direction) as soon as possible in early January 2018.”

22. On 21 December 2018 the respondent replied (with copy to the appellant’s representatives) stating that in response to my further directions of 11 December 2018:

“The Respondent accepts that the family and location details in the report dated 2 December from the Afghan Ministry of Interior’s IDCU are consistent with those given to the Respondent by the Appellant during his asylum application and appeal (see in particular D9 and D18-21 of the respondent’s appeal bundle).

At the hearing on 5 October, I submitted that there was no evidence that the Taliban or other anti-Government elements were in control of the Appellant’s home area. Although Mr Badir Khan is quoted in the IDCU report as stating that the Appellant’s home area is under Taliban control, the fact that the IDCU was able to conduct a site visit to Cheen Zarai village would seem to indicate that the Afghan Government has influence in, and access to this area.”

23. I received no response from the appellant’s representatives.
24. On 7 February 2019 I caused the Tribunal’s Correspondence team to conduct a check to establish whether or not any response had been received from the appellant’s representatives.
25. On 13 February 2019 they replied that there was no record of any further reply.

My decision

26. The appellant is still a minor, having been accepted as being born in January 2002. He has leave to remain as an asylum-seeking unaccompanied minor until July 2019. The only issue in this appeal is whether he is entitled to asylum as of the date of my making the decision.
27. As noted earlier, the adverse findings made by the FtT judge in relation to the appellant’s claimed difficulties in Afghanistan have been preserved. He can only succeed in his appeal is able to establish that he would face a well-founded fear of persecution or serious harm on return to Afghanistan.
28. At the date of the last hearing, the respondent’s position is that the appellant’s home area was under government control. In the IDCU report of 2 December 2018 the Afghan official states that the village is under Taliban control. Whilst Mr Howells makes a good point that the fact of the IDCU visit to the village is an indication that the Afghan government continues nevertheless to have influence in and access to the area, I have not been helped by the failure of the appellant’s representatives to make any submissions in relation to this issue. Nevertheless, for the purposes of this appeal I shall proceed on the basis of the latest information in the form of the IDCU report to regard the appellant’s home area as unsafe. That may be more generous to him than is warranted, inasmuch as the mere fact of Taliban control does not establish that he would be at real risk of serious harm from them, but I will assume so nevertheless.

Mr Howells has already conceded that by virtue of his status as a minor the appellant can show membership of a particular social group.

29. It remains, however, that the appellant cannot succeed in his appeal unless he can show that he would not have a viable internal relocation alternative in Kabul.
30. As regards the position of young men returning to Kabul generally, the Upper Tribunal has recently issued new country guidance covering this issue, in **AS (Safety of Kabul)** Afghanistan CG [2018] UKUT 118 (IAC) (28 March 2018). The head note to this case reads:

“Risk on return to Kabul from the Taliban

- (i) *A person who is of lower-level interest for the Taliban (i.e. not a senior government or security services official, or a spy) is not at real risk of persecution from the Taliban in Kabul.*

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 many 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.*

Previous Country Guidance

- (vi) *The country guidance in AK (Article 15(c)) Afghanistan CG [2012] UKUT 163 (IAC) in relation to Article 15(c) of the Qualification Directive remains unaffected by this decision.*
- (vii) *The country guidance in AK (Article 15(c)) Afghanistan CG [2012] UKUT 163 (IAC) in relation to the (un)reasonableness of internal relocation to Kabul (and other potential places of internal relocation) for certain categories of women remains unaffected by this decision.*

(viii) *The country guidance in AA (unattended children) Afghanistan CG [2012] UKUT 16 (IAC) also remains unaffected by this decision.*"

31. In addition, it is pertinent to set out what the panel found at paras 230-235:

"230. Our findings above show that it is not generally unsafe or unreasonable for a single healthy man to internally relocate to Kabul. However, we emphasise that a case-by-case consideration of whether internal relocation is reasonable for a particular person is required by Article 8 of the Qualification Directive and domestic authorities including Januzi and AH (Sudan). When doing so, we consider that there are a number of specific factors which may be relevant to bear in mind. These include, individually as well as cumulatively (including consideration that the strength of one factor may counteract and balance the weakness of another factor):

- (i) Age, including the age at which a person left Afghanistan.
- (ii) Nature and quality of connections to Kabul and/or Afghanistan.
- (iii) Physical and mental health.
- (iv) Language, education and vocational and skills.

231. We consider age as a relevant factor given that we have not seen any reason or evidential basis to depart from the specific guidance given in AA (unattended children) Afghanistan CG [2012] UKUT 16, which was supported in evidence before us as to greater risk to or vulnerability of minors. There is no bright line rule at the age of 18 when a person in the United Kingdom is considered to be an adult (there are different views as to becoming an adult and in particular as to achieving manhood in Afghan society which is not specifically linked to age but more to marital status) where such issues fall away overnight but are more likely to gradually diminish.

232. 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.

233. Although we find that it is reasonable for a person without a support network or specific connections in Kabul or elsewhere in Afghanistan to internally relocate to Kabul, a person will be in a more advantageous position if they do have such connections depending on where they are, the financial resources of such people and their status/connections. We have in mind that the availability of a support network may counter a particular vulnerability of an individual on return.

234. In our conclusions, we refer throughout to a single male in good health as this is the primary group of people under consideration in this appeal and reflects the position of this particular Appellant. It is uncontroversial that a person who is in good health or fit and able is likely to have better employment prospects, particularly given the availability of low or unskilled jobs involving manual labour in Kabul. We were not provided with any specific evidence of the likely impact of poor physical or mental health on the safety or reasonableness of internal relocation to Kabul but consider it reasonable to infer that this could be relevant to the issue and the specific situation of the individual would need to be carefully considered.
235. Finally, it is also reasonable to infer that a person who speaks a local language in Kabul would be in a stronger position than a person who does not, and that educational and vocational skills would also strengthen a person's ability to support himself in Kabul with better employment prospects".
32. From the above I derive that Kabul can be considered a viable internal relocation alternative for returnees to Afghanistan subject to individual assessment of their circumstances. **AS** does not deal specifically with the position of returning minors, but does affirm that the case of **AA** remains country guidance. In **AA** it was accepted that unattended children would be at risk.
33. On the facts of the appellant's case, the principal question is whether he would in fact be an unattended child.
34. The first matter arising is whether in fact he has family in Afghanistan. I am satisfied, taking the evidence as a whole, that the appellant does have a mother and two siblings and other extended family members in Afghanistan (in his witness statement of 31 August 2018 he mentioned that in Afghanistan, in addition to his mother and two siblings, he had an uncle Naeem (not the uncle who travelled with him) and a grandfather Mohammed Sadiq as well as a granduncle in Jalalabad.)
35. I do not derive much assistance from the evidence relating to the appellant's account of having lost contact with his family. I found the evidence of Mrs Brady impressive, but the fact that she did not know that the appellant had had contact with his mother since leaving Afghanistan (whilst en route to the UK) and that she stated that she understood that the appellant's siblings were dead, indicates that he has not necessarily provided her and her partner with full information about his family or about past contact with them. The Red Cross correspondence confirms what the appellant has said in his latest additional witness statement, but the purport of this evidence is that he originally said he did not wish them to attempt to trace his family (out of stated concern for their safety), then consented to passive tracing, and only in the past few months asked them to do what they term full tracing. That is a different picture than the one he provided in his witness statement dated 31 August 2016 where he said he had asked the Red Cross to help him find his family "but they are unable to do so". I cannot ascertain whether he afforded them correct particulars

because their documentation redacts the names of his family members sought. Given, however, that there was a period in 2017 where the Red Cross suspended any form of family tracing in Afghanistan, it may be that the appellant did not intend to gloss over his initial reluctance (as expressed to the Red Cross) to go ahead with tracing inquiries. Viewed overall, this body of evidence is most safely treated as a neutral factor. But irrespective of the issue of whether the appellant has genuinely sought to achieve contact with his family since arrival in the UK the latest information regarding the whereabouts of his family is very significant. Whilst it is impossible to resolve the precise name of their village, I consider that the close correspondence between the appellant's family details as given to the respondent and as listed by the IDCU report establishes to a high degree of proof that his mother and two siblings have now been located as specified in the IDCU report. (Further, whilst the names of the village are different, there may be close similarities depending on pronunciation: Sunzai; Cheen Zarai). I do not attach any adverse significance to the reference in the IDCU report to the appellant being a "resident". Later on in the same report it states that his family "is living in this village" and use of this different term indicates that by "resident" the informant meant only to refer to origin, not physical presence.

36. In assessing the IDCU evidence I note that, despite my affording the appellant's representative's ample opportunity to respond to the IDCU report (to end of December 2018), the only response they have made is that of 6 December 2018 and this did not seek to dispute the accuracy of any of the details stated in that report save (by implication) in relation to the name of the village. I see no reason to seek further particulars regarding the identity of the IDCU official concerned or the precise date of the visit etc. I consider it exceedingly unlikely that there could be any persons matching the appellant's given details of the names of his deceased father, his mother and his two siblings other than his true family members.
37. The second issue is whether the appellant can be expected to make contact with his mother and two siblings and other extended family members living in this village. In light of the information provided by IDCU, he is clearly now able to make contact, if he has not already done so. Whether or not in fact he has known of their whereabouts or had contact them since travelling through Greece and Turkey, it is not necessary for me to determine. He can now be reasonably expected to contact his family.
38. The next question is whether it is reasonable to expect the appellant's family members to arrange for him to be met in Kabul by them personally or a trusted relative or person acting on their behalf.
39. I am satisfied that it is reasonably likely that the appellant's family can arrange for him to be met in Kabul in this way. The appellant has at least one uncle residing in this village and other extended family members.
40. I am further satisfied that even if by virtue of Taliban presence they choose not to return him to his home village (or even if the appellant chooses not to return), they will be able to ensure he has a support network in Kabul.

41. The next issue arising concerns whether the availability of a family support network will be significantly affected by the appellant's psychological/mental health problems. In this regard I am prepared to accept that these problems are as described in the reports. However, I am not satisfied that these problems will significantly detract from the ability of his family to provide him with sufficient support. First of all, the evidence does not indicate that these problems will be unameliorated by renewed contact with his family network. Although his foster carer, Mrs Brady, describes him in her witness statement as "very vulnerable" and "emotionally immature", she also described him as having integrated well into the local area and attending school and workings hard. Her account in oral evidence was that he is able to function relatively well with her and her partner's family support.
42. Also of relevance is the medico-legal report by Dr Arnsby-Wilson dated 22 August 2018. This report states that he was diagnosed with PTSD in March 2017, a diagnosis common in children who have been separated from their caregivers, but that he still met these criteria for PTSD and depression at the date of the report. The report states further that his PTSD is highly likely to be associated with multiple events that happened in Afghanistan, his long journey to the UK alone, and being physically abused in Calais. The appellant had stated to the doctor that he did not currently consider himself to have the resources, maturity or insight to support himself without the foster family.
43. There is also a letter from Rebecca Francis of the Gloucestershire Action for Refugees and Asylum Seekers dated 14 September 2018. She describes the appellant as a friendly, genuine and polite young person who is well thought of by staff and volunteers as GARAS and who has many friends among asylum seekers and other young people in the local community. When feeling up to it he is clearly pleased to spend time with his friends, playing cricket and other activities although it was noticed he was often quiet and withdrawn. "Sadly [the appellant] remains a very vulnerable young person struggling to feel positive... He is often very low in mood and anxious and seems preoccupied with worries and with his headaches. He is often tired and hasn't slept well, for example suffering nightmares." It was known that on occasions he became distressed, feeling very low and hopeless and for example banging his head and his file was marked as a "client of particular vulnerability". It was noted that he had been referred to their Counselling Service in February 2019 and was seen for some time by their lead psychotherapist. It is stated that when the appellant is in a poor mental state his foster, parents are vital to care for him.
44. These sources satisfy me that the appellant is a vulnerable young person but equally they show that he is able to function reasonably well with family support. Although he has undergone therapy in 2017 there is nothing to show that he is considered to still require such assistance. He is only taking medication for migraine. There is no reason to consider that his own family members in Afghanistan cannot ensure that he is assisted in establishing a routine and conducting educational or other activities appropriate for someone of his age - in much the same way as his current foster carers are ensuring that. Indeed, since at least some of the factors affecting his

psychological/mental health clearly relate to his stress regarding the outcome of proceedings, being back with his own family should assuage them to some degree.

45. In the event that the appellant should continue to experience significant psychological/mental health problems, I am satisfied that he could access mental health facilities in Kabul. That is consistent with the background country information. Even if he chooses to return to his home area, it is relatively near to Kabul.
46. I understand the perspective of the appellant and his foster carers, who are to be commended for the evident love and care they have given the appellant; they clearly consider the appellant's best interests lie in him remaining in the UK for the foreseeable future, beyond 1 July 2019. However, I have to apply the law as it is and I am not concerned in this appeal with the appellant's Article 8 circumstances. Indeed, as a matter of law I can only be concerned solely with the question of whether he can show he qualifies as a refugee under the Qualification Directive, whose cornerstone is Article 1A(2) of the 1951 Refugee Convention. I am prepared, in order to assist the parties, to also state my view on the question as to whether he would be at risk if returned now of treatment contrary to Article 3 of the ECHR. Given my above findings, the only answer I can give in relation to both questions is that he will not face a real risk of persecution or of treatment contrary to Article 3.
47. To conclude:

I have already set aside the decision of the FtT judge for material error (although preserving the judge's findings on the appellant's past experiences in Afghanistan);

The decision I re-make is to dismiss the appellant's asylum appeal.

An anonymity direction is made.

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.

Signed:

Date: 14 February 2019

Dr H Storey
Judge of the Upper Tribunal