



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/09979/2019 (V)

**THE IMMIGRATION ACTS**

Heard Remotely at Cardiff Civil Justice Centre  
by Skype for Business  
On 24 September 2020

Decision & Reasons Promulgated  
On 09 October 2020

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

ARA  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms U Dirie instructed by Sutovic & Hartigan, Solicitors  
For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to Contempt of Court proceedings.

## **Introduction**

2. The appellant is a citizen of Afghanistan who was born on 1 January 1997. He comes from Nangarhar province.
3. The appellant entered the United Kingdom clandestinely and claimed asylum on 27 October 2010. On 22 December 2010, the Secretary of State refused the appellant's application for asylum but granted him discretionary leave to remain in accordance with the Secretary of State's policy on unaccompanied asylum seeking children.
4. On 15 January 2014, the appellant applied for further leave to remain. That application was refused on 2 February 2015 and his subsequent appeal was dismissed by the First-tier Tribunal (Judge Rowlands) on 27 July 2015. Judge Rowlands rejected the appellant's claim that he had been at risk from the Taliban as a result of his father's involvement with the Taliban which had caused the appellant to leave Afghanistan and come to the UK. The appellant was subsequently refused permission to appeal by the First-tier Tribunal on 17 September 2015. Permission to appeal was granted by the Upper Tribunal but the appellant's appeal was dismissed by the Upper Tribunal on 29 February 2016. The appellant was subsequently refused permission to appeal to the Court of Appeal.
5. On 29 January 2018, the appellant made further submissions. On 24 September 2019, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under the ECHR.
6. The appellant appealed to the First-tier Tribunal. In a determination sent on 20 February 2020, the First-tier Tribunal (Judge J C Hamilton) dismissed the appellant's appeal. Like Judge Rowlands, Judge Hamilton rejected the appellant's claim that he had been at risk from the Taliban as a result of his father's involvement with the Taliban which had caused the appellant to leave Afghanistan and come to the UK. However, the judge accepted, based upon the expert evidence of Dr Giustozzi, that the appellant was at risk of forced recruitment by the Taliban in his home area. The Secretary of State also accepted that the appellant could not return to his home area as he would face a real risk of serious harm arising from indiscriminate violence contrary to Art 15(c) of the Qualification Directive (Council Directive 2004/83/EC) in his home area. The central issue before Judge Hamilton was whether the appellant could internally relocate to Kabul. The judge found that it would not be unduly harsh for him to do so and so dismissed his appeal on asylum and humanitarian protection grounds. He also dismissed the appellant's appeal under Art 8 of the ECHR.

## **The Appeal to the Upper Tribunal**

7. The appellant sought permission to appeal to the Upper Tribunal on a number of grounds. On 27 March 2020 the First-tier Tribunal (Judge S P J Buchanan) granted the appellant permission to appeal on all grounds.

8. Due to the COVID-19 crisis, the Upper Tribunal initially issued directions expressing the provisional view that it was appropriate for the appeal to be determined without a hearing in order to determine whether the First-tier Tribunal had made an error of law and its decision should be set aside. However, the appeal was ultimately listed for a remote hearing by Skype for Business. That hearing took place on 24 September 2020. I was based in the Cardiff Civil Justice Centre. Ms Dirie, who represented the appellant, and Mr Howells, who represented the Secretary of State, took part in the hearing remotely by Skype for Business.

### **The Grounds of Appeal**

9. Ms Dirie relied upon her grounds of appeal which set out Grounds 1 to 6.
10. Ground 1 contends that the judge erred in law by failing to give proper weight to the UNHCR Guidelines in assessing the risk to the appellant in Kabul and whether internal relocation was an option.
11. Ground 2 contends that the judge was wrong to treat the Upper Tribunal's decision in AS (Safety of Kabul) Afghanistan CG [2018] UKUT 118 (IAC) ("AS1") as an extant country guidance decision as it had been set aside by the Court of Appeal.
12. Ground 3 contends that the judge failed to give adequate reasons for his conclusion that adequate medical treatment for the appellant's mental health was available in Kabul. In particular, it is contended that the judge failed properly to take into account the evidence from Dr Giustozzi as to the availability of mental health treatment in Kabul.
13. Ground 4 contends that the judge erred by finding that the appellant had "exaggerated, embellished and fabricated" his account of his mental health symptoms".
14. Ground 5 contends that the judge inappropriately deferred to the adverse credibility finding that Judge Rowlands made in the appellant's 2015 appeal.
15. Ground 6 contends that the judge made a purely speculative finding and failed to give adequate reasons for finding that the appellant would have "social support" whether directly or indirectly from his family in Kabul.

### **Discussion**

#### **Grounds 1 and 2**

16. It will be helpful to take Grounds 1 and 2 together.
17. Although Ms Dirie did not abandon Grounds 1 and 2, she made no oral submissions in support of those grounds. This was because of the Upper Tribunal's subsequent decision, following the setting aside of its earlier decision by the Court of Appeal, in AS (Safety of Kabul) Afghanistan CG [2020] UKUT 130 (IAC) ("AS2"). Both Ms Dirie

and Mr Howells accepted that the issues under Grounds 1 and 2 was whether any error by the judge was material in the light of AS2.

18. As Ground 1 makes plain, the contention is that the judge failed to give adequate reasons for rejecting, and not applying, the UNHCR's view in its document, *UNHCR Eligibility Guidelines For Assessing The International Protection Needs of Asylum-seekers from Afghanistan* (30 August 2018) that internal relocation to Kabul was "generally not available".
19. Judge Hamilton set out the relevant parts of the UNHCR's document at para 30 of his determination. However, in AS2 at [152]-[193], the UT considered in detail the UNHCR's position both in its 2018 Guidelines and in more recent documents in 2019. That evidence was not "presumptively binding" and so determinative of the judicial assessment of risk (see HF(Iraq) v SSHD [2013] EWCA Civ 1276 at [43]-[44] per Elias LJ). It formed "part of the overall examination of the particular circumstances of each of the appellant's case, no more no less" (see R(EM(Eritrea)) v SSHD [2014] UKSC 12 at [74] per Lord Kerr). In its findings (based on all the evidence), the UT in AS2 did not reach the same conclusion in relation to the risk of indiscriminate violence in Kabul or as to internal relocation. At [209], the UT said this:

"Although violent crime is prevalent, the evidence does not point to it being at such a high level that the appellant would be at real risk merely on account of his presence in Kabul."

20. At [210] the Tribunal recognised its finding was different from the conclusion reached in the UNHCR documents, including the 2018 Guidelines. The UT said this:

"We recognise that we have reached a conclusion that is different from that expressed by UNHCR in the 2019 UNHCR submissions where (in contrast to the 2018 UNHCR Guidelines and 2019 UNHCR COI Report) it is stated in terms that UNHCR believes Kabul is not 'a relevant IFA'. We have based our assessment on the same statistical evidence relied upon by the UNHCR (casualty rates recorded by UNAMA). However, our approach to the UNAMA casualty figures appears to differ to UNHCR in two significant ways.

- a. Firstly, it appears that UNHCR have looked at the total number of casualties, compared these over time, but have not considered the casualty rate. We note that the approach we have adopted, of relying on the casualty rate rather than the absolute number of casualties, was also used by EASO, who in the 2019 EASO Guidance contextualised the number of civilian casualties in 2018 by noting that the total of 1,866 (as reported by UNAMA) corresponded to 38 per 100,000 inhabitants. In our view, once the total number of casualties in Kabul is set against the size of the population, the conclusion that the risk is at a level where internal relocation is not an option (i.e. not relevant), becomes untenable.
- b. Secondly, UNHCR appears to have interpreted the UNAMA figures as showing an upward trend, over the last several years, in the number of casualties in Kabul. However, as explained above, we do not agree that the data supports such a conclusion, as it appears to us that, since 2016, there has been a relatively steady and consistent number of casualties each year".

21. Having considered the UNHCR evidence, as summarised in the headnote, the UT did not accept that the level of indiscriminate violence engaged Art 15(c). At para (ii) the UT said this:
 

“(ii) There is widespread and persistent conflict-related violence in Kabul. However, the proportion of the population affected by indiscriminate violence is small and not at a level where a returnee, even one with no family or other network and who has no experience living in Kabul, would face a serious and individual threat to their life or person by reason of indiscriminate violence”.
22. In the light of AS2, it cannot be said that the UNHCR Guidelines should, and would, have driven Judge Hamilton to reach a conclusion that the appellant’s return to Kabul would breach Art 15(c) of the Qualification Directive. The UT’s now country guidance in AS2 is that no such risk can be established despite the UNHCR’s views.
23. Likewise, to the extent that the UNHCR evidence proposed that it would be unreasonable or unduly harsh, such that internal relocation was not available, to return to Kabul, the UT’s decision in AS2 reached a different conclusion “in general”. At para (iii) of the headnote, the Upper Tribunal’s position is summarised that:
 

“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 and even if he does not have a Tazkera”.
24. At paras (iv) and (v) of the headnote, the UT recognised that the “particular circumstances of an individual applicant must be taken into account in the context of conditions in the place of relocation”. In this appeal it is not suggested that Judge Hamilton failed to do that, Ground 1 squarely challenged his decision on the basis that the UNHCR’s view both on the risk of indiscriminate violence in Kabul and other conditions made the appellant’s relocation there unduly harsh or unreasonable.
25. Given AS2, I am satisfied that, to the extent that Judge Hamilton did not fully take into account the UNHCR evidence (which it is far from clear was the case given his extensive citation of it at para 30), there was no material error. I, therefore, reject Ground 1.
26. Ground 2, in my view, misunderstands what the judge was saying at para 67. There, he said that he did not find the UNHCR Guidelines:
 

“to be sufficiently cogent evidence to allow me to depart from the current country guidance”.
27. Ground 2 contends that the judge was there referring to AS1 which was, as a result of it being set aside by the Court of Appeal ([2019] EWCA Civ 873), not extant country guidance. That is not, in my view, what the judge was saying in para 67.
28. At para 29 of his judgment the judge recognised that AS1 could not be relied upon. He said this:

“In respect of the case law relating to the situation in Kabul, the respondent’s representative accepted the Court of Appeal had found the Upper Tribunal’s country guidance in respect of the level of danger in Kabul to be unreliable and had remitted that issue to the Upper Tribunal for reconsideration. He said this meant the previous guidance, set out in the case of **AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163** applied and in that case the Upper Tribunal had concluded Kabul was ‘*generally safe*’ for living there. I agree that the headnote from **AK** is, broadly speaking, consistent with this submission”.

29. Then at para 30 the judge quoted the appellant’s submission that both AK and AS1 were now out of date in the light of the UNHCR evidence and Dr Giustozzi’s report which relied upon it.
  30. It is clear that at para 67, when the judge referred to “the current country guidance” he was referring to AK which, AS1 having been set aside, was the existing country guidance, albeit dating from 2012. That must follow from what the judge said at para 29 about the effect of the Court of Appeal’s decision on AS1 leaving AK as the extant or current CG decision. I do not, therefore, conclude that the judge failed to recognise that the extant country guidance was AK and not AS1. In any event, given AS2, and that the appellant’s case was based upon the UNHCR Guidelines as a basis for departing from the country guidance, any error by the judge cannot conceivably be said to have been material.
  31. I therefore reject Ground 2.
- Grounds 3 and 4
32. I will also take Grounds 3 and 4 together.
  33. Grounds 3 and 4 challenge the judge’s findings in relation to the appellant’s claim that his mental health problems were relevant on return to Kabul. The judge essentially made two findings. First, whilst he accepted that the appellant was “likely to be depressed, anxious and extremely stressed” (see para 58), the judge found that the appellant had “exaggerated, embellished and fabricated the account of his symptoms” (see para 59). Secondly, “adequate medical treatment would be available” to the appellant in Afghanistan (para 60).
  34. Ms Dirie submitted, relying upon Ground 4, that the judge failed to give adequate reasons for his finding that the appellant had “exaggerated, embellished and fabricated” his symptoms. She submitted that it could not really be said that the appellant had tricked all the doctors over an extended period of time and had been provided with drugs for his treatment. She accepted that the medical evidence, in the form of his GP records and a counsellor’s review (see, C2 and C110 of the bundle) diagnosed him as suffering from depression, mixed anxiety and depressive disorder.
  35. Mr Howells submitted that there was no medico-legal report supporting the appellant’s mental health diagnosis. The judge had considered the medical notes at paras 51 and 52; he had noted that the appellant was not taking his medication (see

para 50); he noted that the appellant's history of self-harming on one occasion (see para 54), and had given anxious scrutiny to the evidence.

36. I do not accept Ms Dirie's submissions on Ground 4. The judge noted (at para 57) that there was no medico-legal report concerning the appellant's mental health. The principal medical records concerning the appellant's health, including his mental health, were his GP records and documents relating to a mental health referral in July 2019 (Section C of the appellant's bundle). Those records show that from around December 2016 that the appellant was attending his GP because he was, he said, suffering panic attacks and symptoms of anxiety. He was prescribed medication such as Mirtazapin. They recorded entry in February 2019 of self-harm on the appellant's forearm involving around 30 cuts. He is reported to continue to have thoughts of self-harm in May 2019 but no new injuries and no suicidal intention and no plans for suicide. It would appear that in July or August 2019, the appellant was seen by the Community Mental Health Team and was advised to see his GP for a prescription of Fluoxetine for "mixed depression and anxiety disorder" (see Dr Dumbelton's letter dated 22 July 2019 at C121-C123). He was prescribed that medication in July/ August 2019 (see GP notes at C32).
37. The judge dealt with the evidence concerning the appellant's mental health at paras 50–59 as follows:

"50. The appellant has been prescribed antidepressants for some time. However at his mental health assessment in June 2019, he told the doctor that he had not taken antidepressants for over two years. In April 2019 his GP noted that he was not receiving his prescribed medicine (AB page C26). In May 2019 he said he had stopped taking antidepressants five months beforehand (AB page C101). When asked to clarify this issue the appellant gave a vague answer and said he had stopped taking antidepressants because of the side effects. I accept that antidepressants can have side effects. However although the appellant visited his doctor regularly for various physical ailments he does not appear to have been proactive about raising the issue of the difficulties he was experiencing with his antidepressants. He says he just stopped taking his medication. Arguably his failure to seek alternative treatment for his mental health issues, despite his frequent visits to the doctor was not consistent with his claim to be suffering from significant or debilitating symptoms.

51. The appellant has given other contradictory information to medical professionals. In May 2019 he said that his mood was so low that he was self-harming and '*only managing to go out for a walk but struggling to do other activities of daily living*' (AB page C131). There are other examples of this sort of information being provided (e.g. AB page C30 – '*feelings of hopelessness, lives alone, no motivation to attend college, no appetite, no exercise*'). However his GP notes for June 2019 record that he is '*still playing cricket*' and was complaining about a sports related injury. Then in July 2019 he told psychiatrists that he spent a lot of time in his bedroom and found it hard to leave the house and did not like others seeing him. His only distraction was said to be his PlayStation (AB/C80). In evidence he accepted that this is what he had said.

52. When he gave evidence he was asked about his day-to-day activities. He said that he went out shopping, socialised and played cricket but that this was just to distract himself. When asked to clarify what it was that he could not do because of his mental health difficulties he gave a vague answer claiming that he was unable to do anything properly and just went out because that was what his therapist had told him to do. I find this unlikely to be true. His therapy has only commenced relatively recently. He was first referred in February 2019 but did not attend and then re-referred in May (AB page C131).
  53. The appellant has given other contradictory information to medical professionals. He has said that his mental health has prevented him from going to college. However at other times he has talked about funding issues. When he gave evidence he accepted that there were unspecified funding issues that prevented him going to college. He said that he had meant to say that stopping college has affected his mental health. I note his medical notes refer to him trying to get sick notes to explain why he had not been able to attend college (AB page C18).
  54. The appellant claimed to have attempted to kill himself and self-harm. These incidents have all been self-reported. The only independent evidence of self-harm was that the GP described in his [] as '*30 superficial cuts*' (AB/C24). As I understand it these superficial cuts were all, inflicted on the same occasion and the appellant did not seek or require medical attention at the time of the infliction. The medical notes also show that he has given various accounts of how he harmed himself. I do not minimise the fact that the appellant caused himself even minor harm. However I must consider this in the light of the evidence as a whole.
  55. The appellant has also told medical professionals that he is struggling with accommodation. However the Local Authority has always provided him with accommodation.
  56. Overall, the medical notes show that notwithstanding his claimed panic attacks, anxiety and depression, the appellant has attended college, plays cricket, has a long-term relationship with a girlfriend who he sees as a friend and if his evidence to me is accurate he also goes out shopping and socialises. There was no evidence there were any concerns about his self care. He has had the benefit of accommodation, financial and practical support provided by the Local Authority. The medical notes show that his key worker has been actively involved in providing him with practical support and assistance (e.g. driving him to his therapy sessions and supporting with appointments).
  57. One reason why I have had to go through the appellant's medical notes in some detail is because the appellant did not provide a medico-legal report on his mental health. His representative argued that the information in his medical records allowed me to draw a reasonable inference that his medical health is in a fragile state and returning him to Afghanistan risks serious deterioration and possible self-harm".
38. Then in paras 58 and 59 the judge went on to make findings in relation to the appellant's mental health:



- “58. I accept the appellant is likely to be depressed, anxious and extremely stressed. However for the reasons set out above I have concerns about the information the appellant has been providing to medical professionals. An expert report may have addressed these issues but no such report was provided.
59. Looking at the evidence overall I do not find that the appellant [] has been candid when giving information to medical professionals. I find he has exaggerated, embellished and fabricated the accounts of his symptoms. This reduces the weight I can give to the information in his medical notes regarding his fragile mental state. It is reasonable to infer that any symptoms of anxiety or depression he does have are attributable to the stress caused by his uncertain immigration status and the fact his hopes of living in the UK are in jeopardy. As noted in the RL, this is consistent with the views of at least some of the medical professionals involved in his care (see for example AB page C78)”.
39. In my judgment, the judge fully considered the medical evidence which was available. The judge was not, as Ms Dirie submitted, suggesting that the appellant had been able to ‘pull the wool over the eyes’ of many health professionals. The judge accepted, on the basis of the evidence, that the appellant suffered from depression, mixed anxiety and depressive disorder. The medical evidence went no further than that. The grounds rely upon the Istanbul Protocol and a diagnosis of PTSD. Ms Dirie accepted that the appellant had not been diagnosed with PTSD
40. The judge did not, therefore, reject the diagnosis made by the health professionals but rather, did not accept, that the appellant’s account of his symptoms arising from that condition should be taken at face value. The judge was entitled to take into account the appellant’s evidence and the inconsistencies in it and that he had not been taking any medication, even if it were prescribed to him, for some period of time. He had told his GP that he had stopped taking antidepressants for five months in May 2019. In June 2019, he said he had not been taking them for over two years. The appellant also inconsistently claimed that he was both debilitated in day-to-day activities but also engaged in many social activities which potentially contradicted that. Whilst recognising the appellant’s diagnosis, it was reasonably open to the judge to reach the conclusion that the symptoms said by the appellant to be the consequences of his mental health problems were “exaggerated, embellished and fabricated”.
41. For those reasons, I reject Ground 4.
42. As regards Ground 3, Ms Dirie submitted that the judge (at para 60) failed properly to deal with Dr Giustozzi’s report when he had summarised his views as “some level [] of treatment is available in Kabul”. Ms Dirie submitted, relying upon her summary in para 10 of her grounds of appeal, that Dr Giustozzi’s view was that the Kabul mental health hospital only had 60 places and in order to be admitted to the hospital it was necessary to be accompanied by a relative at all times. Many patients who were not dangerous were sent to the Red Crescent Secure Psychiatric Unit where patients were kept chained and/or sedated. There were only two fully trained

psychiatrists in the country and 101 partially trained doctors; and the opportunities for psychosocial support was almost non-existent mainly because of the extreme shortage of trained mental health professionals. Most psychotropic drugs available were imported from Pakistan and were only available illegally and it was estimated in 2014 that up to half of all medicines circulating in Afghanistan were Pakistani counterfeits. It was unlikely that the appellant would receive more than cursory attention by the medical staff at the country's only mental health hospital. Ms Dirie submitted that the judge had failed to deal with the evidence and reach findings on whether the appellant would have access to his existing medications, namely Fluoxetine and propranolol. These were only available as illegal imports from Pakistan.

43. Ms Dirie submitted that it was not sufficient for the judge simply to rely upon the evidence set out in the decision letter in the form of MedCOI responses at paras 107-137 of the decision letter.
44. Mr Howells submitted that it was open to the judge to give substantial weight to the evidence in the refusal letter about the available treatment in Kabul. He also relied on the fact that the judge had made adverse findings about the appellant's evidence, including that he had exaggerated his symptoms, the judge had found that the appellant was not taking his medication and that he had only recently begun therapy.
45. The judge dealt with the availability of treatment at para 60 as follows:  

“The appellant relied on Dr Giustozzi's view that for the most part the provision of mental health care is non-existent in Afghanistan. However even Dr Giustozzi accepts some level [] of treatment is available in Kabul. This is confirmed at paragraphs 106 to 137 of the RL. I found the evidence in RL sufficiently comprehensive and recent for me to give it substantial weight. Furthermore the appellant has the advantage of already having had appropriate treatment identified by his doctors on (*sic*) the UK. He already has a diagnosis and treatment plan. Looking at the evidence as a whole, I find adequate medical treatment would be available to the appellant in Afghanistan”.
46. The appellant claim that treatment would not be available began on somewhat shaky ground given that the judge's finding that the appellant had not previously stopped taking the medication that was prescribed for him.
47. In my judgment, it would be wrong to assume that the judge did not take into account Dr Giustozzi's views on the availability of treatment for mental health set out in his report at B32-B39 which Ms Dirie summarised and I set out above. Whilst it is undoubtedly the case that the judge did not set out, in detail, extracts or references to Dr Giustozzi's report on this issue, he made multiple references to Dr Giustozzi's report which he had obviously read, and taken into account more generally, and at para 40 the judge said he had “read Dr Giustozzi's report carefully”.

48. I have no reason to question Ms Dirie's summary of Dr Giustozzi's views set out at para 10 of her grounds of appeal which I have summarised above. As recently as June/July 2019 when the appellant was seen by a mental health practitioner (Dr Dumbelton) the appellant was for the first time recommended to be prescribed Fluoxetine as an antidepressant. Looking at the appellant's GP notes, as the judge clearly did, the appellant was prescribed Fluoxetine in July/August 2019. The judge noted that Dr Giustozzi accepted that some level of treatment was available in Kabul. That is undoubtedly the case. Dr Giustozzi refers to the only mental health hospital in Afghanistan being in Kabul. However, he notes the limitation on staffing and places available. There are now six psychiatrists (rather than two in 2010) working at that hospital. Dr Giustozzi notes the increase in staffing at para 26 of his report. Dr Giustozzi also notes, in particular at para 42, that several "anti-psychotic" drugs are available in Afghanistan including Mirtazapin which, itself, is a drug previously prescribed for the appellant. Dr Giustozzi notes that in recent years "a number of psychotropic drugs have become available in Afghanistan" (see para 31) although he also notes that they are mostly imported from Pakistan illegally (80%).
49. In the light of Dr Giustozzi's evidence, the judge was not, in my judgment, wrong to state that "some level" of psychiatric treatment was available in Kabul. Indeed, the evidence set out at paras 106-137 of the decision letter is consistent with that. In particular, it notes that inpatient psychiatric treatment is available in Kabul (para 114) and that various medicines for psychiatric treatment are available including Mirtazapin and Risperidone (para 115). The quoted report dates from June 2018 and in relation to a more recent report dated 3 March 2019, it is further noted that inpatient treatment by a psychiatrist is available and outpatient treatment and follow-up by a psychiatrist is available (see paras 133 and 134).
50. The background evidence (including the expert evidence of Dr Giustozzi) did not preclude the judge from forming the view that it had not been established that the appellant, if he needed it, would be unable to obtain psychiatric treatment for his depression and anxiety, including medication in Kabul, even though the level of available treatment would be less than is available to the appellant in the UK. Given the judge's findings in respect of the appellant's mental health, it was, in my judgment, open to the judge to find that there would be adequate medical treatment available to the appellant in Kabul should he need it.
51. I, therefore, reject Ground 3.

#### Ground 5

52. Ground 5 challenges the judge's adverse finding in relation to the appellant's claim that he was at risk from the Taliban as a result of his father's prior involvement with the Taliban before he left Afghanistan. This claim had been rejected by Judge Rowlands in 2015 and his decision had been unsuccessfully appealed. His adverse finding therefore stood. This was a distinct issue from the one which Judge Hamilton eventually found in the appellant's favour, namely whether (even if his

history was not believed) he was at risk of forced recruitment by the Taliban in his home area which Judge Hamilton found in his favour (see paras 43–44).

53. At para 38, in relation to his claim based upon past involvement with the Taliban, Judge Hamilton said this:

“Judge Rowlands found that he was not being truthful about this. The appellant only gave very limited oral evidence before me and none of the questioning focused on this issue. Judge Rowlands heard far more extensive evidence from the appellant about this issue and arguably was therefore in a better position than me to reach conclusions about the credibility of this part of his account. As far as I am aware, it is not now being suggested that at the time the appellant gave evidence before Judge Rowlands, he was suffering from undiagnosed mental health issues that the judge was unaware of and that would have affected the judge’s assessment of his credibility”.

54. Ms Dirie submitted that the judge had given excessive weight to Judge Rowlands’ conclusion and had failed to take into account the appellant’s mental health which might have affected the cogency of his evidence before Judge Rowlands. However, when I enquired what evidence there was that the appellant had mental health problems at the time of the hearing before Judge Rowlands, Ms Dirie accepted that the evidence only supported the appellant having mental health problems from 31 December 2016.
55. Judge Rowlands’ adverse credibility finding was undoubtedly a ‘starting point’ for Judge Hamilton’s assessment of the appellant’s claim of past activity putting him at risk (see Devaseelan [2003] Imm AR 1). It does not seem that the appellant sought to pursue this basis of his claim when he made his most recent application. At para 37, Judge Hamilton noted that in the refusal letter the Secretary of State stated that the “appellant was no longer claiming to be in danger from the Taliban”. However, in his most recent statement, Judge Hamilton noted that the appellant had again made the same claim that he had been at risk from the Taliban when he came to the UK. The reality is, however, that the appellant “only gave very limited oral evidence” before Judge Hamilton in relation to his claim based upon events before he left Afghanistan. As the judge noted: “none of the questioning focused on this issue”. In these circumstances, Judge Hamilton was entitled to conclude that the appellant had failed to establish the matters previously relied upon before Judge Rowlands and rejected by him when those issues were the central part of the appellant’s claim. There was no evidence that the appellant suffered from any mental health problems that may have affected the integrity of his evidence given before Judge Rowlands. As I have said, Ms Dirie acknowledged that was the case. In those circumstances, it was undoubtedly reasonable and rational for Judge Hamilton, for the reasons he set out in para 38, to accept the findings made by Judge Rowlands adverse to the appellant’s credibility in relation to the events he claimed to rely upon before he left Afghanistan.
56. I reject Ground 5.

## Ground 6

57. In his decision, Judge Hamilton found that the appellant would have social support, in the form of his family, whether “directly or indirectly” in Kabul (para 63). In the earlier appeal, Judge Rowlands had found that the appellant had family in Afghanistan who could support him.
58. Before Judge Hamilton, the appellant claimed that he had lost contact with his family and, following the hearing at the invitation of the judge, he produced further evidence concerning attempts to trace his family. At paras 61–62, the judge said this:
  - “61. When considering if the appellant has shown he has lost contact with his family, I take into account the fact that his home area is now too dangerous for him to return to. This could be consistent with losing contact with his family. Nevertheless, even on his own account he failed to make any effort to trace them until shortly before the appeal hearing before me. I do not find this consistent with having lost contact with his family. He has had a high level of support and the evidence suggests he is an intelligent young man. Looking at the evidence as a whole, making allowances for the appellant’s youth and claimed vulnerability in applying the lower standard of proof, I still find myself unable to accept the appellant has lost contact with his family as he has claimed. I do not find he has provided a plausible explanation for his failure to try and trace his family. I find he would have done this if they were really missing.
  62. It is difficult to assess what the appellant’s circumstances would be in Kabul because he has not been truthful about the nature and degree of his contact with his family in Afghanistan. However looking at the evidence as a whole, taking into account the considerations set out in paragraph 43 above, I find it reasonable to infer that he has chosen not to be candid because the truth would not assist his attempt to remain in the UK.
  63. Accordingly I have concluded that the appellant has not shown that family support would be unavailable to him in Kabul. I find the appellant’s family in Afghanistan will be able to offer him social support either directly or indirectly that would include helping him access any medical treatment he may require”.
59. At paras 46-47, the judge dealt with the appellant’s attempts (including a recent attempt) to seek to trace his family:
  - “46. The appellant claims that he has lost contact with his family. He told Judge Rowlands he had tried to trace them through the Red Cross but no evidence to support this claim was provided. At a mental health assessment in June 2019 (AB page C76), he told the doctor that he had tried to contact his family but they seemed to have moved or changed their telephone number. However, even on his own account, the appellant did not take steps to trace his family until shortly before the appeal hearing before me. When questioned about this, he said that his solicitor had contacted the Red Cross for him in November 2019. I gave permission for him to provide evidence of this contact. My expectation was that I would

be receiving something from his solicitors confirming what his contact with the Red Cross was and what information the Red Cross was given.

47. However, what I received was the letter dated 10 June 2020 from his support service (see paragraph 32 above). I did not find this evidence very satisfactory. On my reading of this letter, the support service merely states that it signposted the appellant to the British Red Cross on 18 October 2019 and left it to him to contact them. The appellant claims he did this on 22 October 2019 and is still waiting for a response. When assessing his claim I bear in mind Judge Rowlands' findings regarding his truthfulness and must be cautious about accepting his evidence where it is unsupported by other credible evidence, particularly of his reason for expecting to have provided such evidence. I was not provided with evidence of direct contact between the appellant and the Red Cross. In my view it was reasonable to expect him to provide such evidence or explain its absence. He has done neither. I note the support service letter states that *'we are waiting for a response'*. However reading the letter as a whole, I find it highly likely that this statement is based on information given by the appellant".

60. Then at para 48, the judge noted that the appellant claims to have tried to trace some relatives through Facebook but unsuccessfully. The judge then said:

"However, even allowing for his vulnerability, his evidence about this was very vague and no other evidence about this was provided".

61. Then at para 49, the judge dealt with evidence relied upon by the appellant from a friend "KJ":

"He also provided an e-mail from his friend KJ (see paragraph 28(2) above). KJ visited Afghanistan last summer (AB page A23). In his e-mail, KJ says that the appellant told him that he had lost his family. However there was no suggestion the appellant had asked KJ friend to try and make enquiries about his family on his behalf while he was in Afghanistan. When the appellant was asked to clarify this he gave a vague answer. KJ did not make a statement and although he attended the appeal hearing, did not give evidence. This reduces the weight I can give to the information in his e-mail".

62. In my judgment, the judge gave careful consideration to the evidence concerning the appellant's claim that he had lost contact with his family. The judge was entitled to approach the appellant's evidence on the basis that he had not been found credible in his claim by Judge Rowlands and, in addition, by Judge Hamilton himself. That was relevant in assessing whether the appellant had established that he had lost contact with his family. The judge dealt fully with the evidence relied upon by the appellant of his attempts to trace his family. There was no supporting evidence that he had even been in contact with the British Red Cross, let alone that they had been unsuccessful in tracing his family. Likewise, his friend, who had travelled to Afghanistan last summer, had not given evidence at the hearing, despite being present. The email (at A23) offers no support for the appellant's claim that he has lost contact with his family.

63. I do not accept Ms Dirie's submission that the judge rejected the appellant's evidence that he had not lost contact with his family simply on the basis of an adverse credibility finding. The judge also took into account the absence of supporting evidence which, might readily be available, and might have assisted to establish the appellant's claim to have lost contact (see TK (Burundi) v SSHD [2009] EWCA Civ 40). The judge reasonably and rationally, giving adequate reasons, did not accept that the appellant had lost contact with his family and that they could provide support to him (if needed) which was a relevant factor in considering what the appellant's circumstances would be, in relation to internal relocation, in Kabul.
64. I reject Ground 6.

### Conclusion

65. For the above reasons, the judge did not materially err in law in reaching his adverse findings and in dismissing the appellant's appeal on asylum, humanitarian protection and human rights grounds.

### Decision

66. The decision of the First-tier Tribunal to dismiss the appellant's appeal did not involve the making of an error of law. That decision, therefore, stands.
67. Accordingly, the appellant's appeal to the Upper Tribunal is dismissed.

Signed

*Andrew Grubb*

Judge of the Upper Tribunal  
2 October 2020