



IAC-AH-SC-V1

**Upper Tribunal  
(Immigration and Asylum Chamber) Appeal Number: PA/04153/2019 V**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 4 May 2021**

**Decision & Reasons Promulgated  
On 28 May 2021**

**Before**

**UPPER TRIBUNAL JUDGE McWILLIAM**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**M B**

**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant/Secretary of State for the Home Department: Ms J  
Isherwood, Home Office Presenting Officer

For the Respondent: Ms K Tobin, Counsel instructed by Malik & Malik Solicitors

**DECISION AND REASONS**

**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 their 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.

1. I shall refer to the Respondent as the Appellant as he was before the First-tier Tribunal. The First-tier Tribunal anonymised the Appellant and this order is to continue.
2. The Appellant is a citizen of Afghanistan and his date of birth is 6 February 1992.
3. The Secretary of State was granted permission to appeal against the decision of Judge of the First-tier Tribunal G Clarke to allow the Appellant's appeal against the decision of the Respondent on 3 April 2019 to refuse his claim on protection grounds. Permission was granted by First-tier Tribunal Judge Keane on 2 February 2021. Thus the matter came before me to determine whether the judge made an error of law.

### **The Decision of the First-Tier Tribunal**

4. The Appellant is a Sunni Muslim of Pashtun ethnicity from Baghlan. The judge accepted the Appellant's claim that his brother was killed by the Taliban in 2001. He found the Appellant's account consistent with the "objective" evidence on the modus operandi of the Taliban in terms of forced recruitment and land grabs and the prevalence of land disputes (see paragraph 79).
5. The Appellant said he was at risk on return from Commander Attiq and the judge recorded that the Respondent accepted the existence of Commander Attiq although the Respondent's evidence is that he is now deceased having been killed by Afghan and NATO forces in 2012.
6. The judge heard evidence from the Appellant and the Appellant's brother. They were both cross-examined. The judge found the core of the Appellant's account consistent that their brother was killed by the Taliban in 2001. She accepted that the family's land was seized by Commander Attiq. The judge said she made allowances for the Appellant suffering from mental health issues which can affect concentration and memory.
7. The judge took into account the medical evidence of Dr Singh concerning the Appellant's mental health and the evidence of country expert, Rachel Reid. The judge properly treated the Appellant as a vulnerable witness bearing in mind Dr Singh's opinion that the Appellant is suffering from a depressive episode of moderate severity and that he shows signs of PTSD (but he did not meet the criteria for a diagnosis of PTSD) (see paragraph 67 of the judge's decision). Dr Singh took into account a report from Dr Cutting of 2 August 2019 that the Appellant was suffering from "*severe depressive episode with psychotic symptoms*".
8. The judge set out parts of Dr Singh's evidence, in whose opinion, the Appellant is *suffering from "a depressive episode of moderate severity."* She set out that Dr Singh stated that, "*The current position is that he is presenting with depression with no signs of recovery. This is exerting a negative effect on his life in respect of social and occupational functioning, leading to distraction on day-to-day activities*". The judge recorded at paragraph 68 that Dr Singh also diagnosed the Appellant as having

*“moderate symptoms of psychopathology and moderate impairment in social or occupational functioning”* and that *“[t]his impairment is attributed to mental health problems.”* At paragraph 72 the judge stated as follows:

“I also remind myself that DH (Particular Social Group: Mental Health) Afghanistan [2020] UKUT 223 establishes that someone living with mental health problems may be a member of a particular social group and therefore potentially qualify under the Convention for international protection as a refugee. However, Ms Tobin confirmed in her closing submissions that this aspect was not being pursued and reliance was placed on the Appellant’s imputed political opinion.”

9. Taking into account all the evidence the judge found that the Appellant’s brother was killed by the Taliban under Commander Attiq and that the Appellant’s family was targeted by the Taliban resulting in the death of his father and the seizure of the family’s land. However, the judge said that the Appellant “has failed to prove, on the lower standard, that Commander Attiq is still alive and I rely on the objective evidence that Commander Attiq was killed in 2012.”

10. The judge said as follows:-

“The Appellant has failed to prove that there are thousands of men who are loyal to Commander Attiq with the implication that they would have an adverse interest in the Appellant to the extent that he has a well-founded fear of persecution on account of his impute (sic) political opinion”.

11. The judge found that there was no credible evidence that Taliban forces under the command of Attiq have any interest in the Appellant, some nineteen years after the death of the Appellant’s brother or eighteen years after the death of his father and seizure of the family land or eight years after the death of Attiq.

12. The judge said at paragraph 97 that she relied on the report of Miss Rachel Reid that the Appellant is unlikely to be of adverse interest to the Afghan forces or Hezb-e-Islami. The judge concluded that the Appellant did not have a well-founded fear of persecution from the Taliban or Afghan forces or Hezb-e-Islami either in Baghlan or elsewhere in Afghanistan (see paragraph 97).

13. The judge then at paragraph 98 said that she had to consider relocation to Kabul. She directed herself in relation to AS (Safety of Kabul) [2020] Afghanistan UKUT 130. The judge said the following at paragraph 101:-

“Even if I were to accept that the Appellant is of lower level interest to the Taliban – which I do not – the country guidance leads me to conclude that such an interest does not lead to a well-founded fear of persecution. This is because the Appellant is not a senior government or Security Services official and is not a spy and therefore, in accordance with the country guidance, is not at real risk of persecution from the Taliban in Kabul.”

14. At paragraph 102 the judge found that the Appellant had failed to adduce evidence that would lead her to go against the country guidance regarding Article 15(c) of the Council Directive 2011/95/EU (Qualification Directive) and that there was not a real risk of serious harm ( “ serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal conflict”) should the Appellant internally relocate to Kabul that would entitle him to subsidiary protection.
15. The judge in the following paragraphs considered the reasonableness of the Appellant relocating to Kabul. The judge found that the Appellant speaks Pashtu, Farsi and a little English and he would be able to communicate and converse in one of the languages spoken in his own country. The judge took into account the Appellant’s evidence that he had worked for someone who had a fruit business in Kabul. The judge found that while the Appellant suffers from mental health problems his physical health was not impaired.
16. The judge found that the Appellant had not disclosed to Dr Singh or Miss Reid that his parents’ in-law live in Kabul. She found that this undermined his credibility. She stated that she had factored in this concealment from the experts when deciding what weight to attach to their opinions. The Appellant’s oral evidence was that his in-laws could not support him because he himself is at risk and they are scared. He said Kabul was not safe because the Taliban are everywhere. He said that his in-laws would not allow the Appellant to live with them because he will attract the attention of the Taliban. However, the judge concluded that the appeal “turns on the Appellant’s mental health.” She stated as follows:-

“109. On my findings, the Appellant is not of adverse attention to the Taliban – or indeed Hezb-e-Islami or the Afghan forces. The Appellant has failed to adduce any credible evidence, on the lower standard, as to why his parents-in-law could not accommodate him and support him on return to Kabul. While the Appellant claims not to have seen his wife and children for ten years, the Appellant confirmed in his oral evidence that he is in regular contact with his wife in Pakistan through WhatsApp. In my opinion, there is no reason why the Appellant’s wife could not arrange with her parents that the Appellant could stay with them in Kabul while he establishes himself in the city.

110. However, in my view, this appeal turns on the Appellant’s mental health and his ability to access treatment and support for his mental health in Kabul.

*Access to mental health in Kabul paragraph*

111. The Upper Tribunal in **AS** made the following findings in respect of mental health provision in Kabul.

‘241. The panel in the 2018 UT decision noted that EASO had recorded very high levels of mental health problems in Afghanistan, creating significant needs, but that there was a lack of trained professionals and inadequate infrastructure. It was noted that there was only one dedicated mental health hospital in Kabul.

242. The evidence before us is consistent with the panel's findings: the conflict has resulted in mental health problems for many inhabitants of Kabul, but there is a lack of facilities (and professionals) available to provide treatment. There is no new evidence on this issue to warrant a departure from the findings of the panel.'

112. The reasons for refusal letter dated 3 April 2019 states that there is treatment available for the Appellant in Kabul. The refusal letter refers to a MedCOI response which confirmed, as of 5<sup>th</sup> February 2019, that inpatient and outpatient treatment by a neurologist as well as inpatient and outpatient treatment by a psychiatrist are available. The refusal letter also states,

*'MedCOI have advised, in response to another enquiry, that the treatment listed below is available at the Nejat Centre, Jadae Darulaman Saraki 2, Habibia School, Kabul,*

*- Inpatient or outpatient treatment and follow up by a psychiatrist; - psychotherapy including cognitive behavioural therapy;*

*- Psychiatric treatment of PTSD by means of EMDR and - psychiatric treatment of PTSD by means of narrative exposure therapy.*

*Inpatient treatment by a psychiatrist is available at the Ali Abad Hospital, Karte Sakhl, Kabul University, Kabul (public facility).*

*Various medicines prescribed for psychiatric treatment are available in Afghanistan (Kabul).'*

113. In terms of the provision of mental health services, Miss Reid states that the objective evidence relied on by the Respondent is 'misleading or inaccurate'. She comments,

*'Firstly, it lists a range of services that exist without realistic comment on true availability in a country where demand far outstrips demand (sic). This prevents a misleading account of the availability of healthcare. Secondly it includes inaccurate information about facilities, citing the Nejat Centre and Kabul University as providing mental healthcare. The former is a drug rehabilitation centre and is in fact widely known as a drug treatment and HIV prevention centre. It is not a place for general mental health issues, in fact as a specialist place for drug users and HIV patients it unfortunately carries a stigma for those who visit it ... the report also refers to a mental health unit at Kabul University: I was sceptical about this so contacted someone who works at Kabul University. Waheed Wafa (executive director of the Afghanistan Centre at Kabul University) confirmed that while there was once a small unit in the psychology department which did not receive external patients it has now closed. Thus the Home Office information about mental health is poorly informed.'*

114. I accept that Miss Reid is an expert on Afghanistan for the following reasons. Firstly, it is clear from Miss Reid's CV that she

has extensive professional and academic interest in Afghanistan. She has worked since 2006 on matters relating to Afghanistan as a journalist with the BBC, a human rights investigator and a consultant. I also find that her expertise is increased by the fact that she lived for several years as a freelance journalist and human rights researcher working for Human Rights Watch from 2007 to 2011, and, as she states herself, 'during this time I travelled all over the country, interviewing a wide range of actors including Afghan victims of conflict, Afghan and international military officials, members of the Taliban, elders, diplomats and many intelligence operators working for Afghan, European and US intelligence agencies'. Even after Miss Reid moved to the United States to focus on human rights issues in Afghanistan and Pakistan she continued to travel frequently to Afghanistan.

115. Secondly, I also attach weight to Miss Reid's opinion that she has given expert evidence to the European Parliament, the US Congress and the Afghan and other government.
116. Thirdly, Miss Reid's CV indicates an extensive publishing and research record on Afghanistan.
117. Fourthly, like Dr Singh, Miss Reid has been provided by the Appellant's solicitors with documents that are not only supportive to the Appellant but also with the Respondent's bundle.
118. Finally, Miss Reid recognises that her overriding duty as an expert is to the Tribunal and she accepts that issues of credibility are the provenance of the Tribunal.
119. For all these reasons, I attach significant weight to the report of Miss Reid.
120. In terms of the specific issue of the Appellant's ability to access mental health services in Kabul, I rely on the expert evidence of Miss Reid that the facilities quoted by the Respondent as available are not available. Miss Reid has not simply expressed her opinion that the Respondent's summary of what treatment and facilities for mental health are available in Afghanistan but have contacted the executive director of the Afghanistan Centre in Kabul University and asylum seekers from Afghanistan, 30 August 2018.
132. As well as finding internal relocation to Kabul unreasonable for this Appellant, I also find internal relocation to Baghlan is also unreasonable.
133. For all these reasons, I allow the appeal on asylum grounds."

17. The judge then went on to consider the appeal under paragraph 276ADE(1)(vi) and she directed herself in relation to the Secretary of State for the Home Department in Kamara [2006] EWCA Civ 813. The judge summarised her conclusions in relation to very significant obstacles as follows:-

"135. In line with AS, the Appellant will receive some financial support as a returnee when he is removed to Kabul. He has the option, on my findings, to live, even on a temporary basis, with his parents-in-law and given his previous employment, may be able to secure employment in the fruit business. However, I rely on the expert evidence of Miss Reid regarding the paucity of mental

health services in Afghanistan. I find it likely that the Appellant will not be able to access the expert treatment and intervention for his mental health that he requires, as set out by Dr Singh, and I find that he is likely to suffer a significant deterioration in his mental health. Such a deterioration will prevent him from reintegrating to life in Afghanistan and being enough of an insider to function within Afghan society. I therefore find that the Appellant meets the test of 'very significant obstacles' under paragraph 276ADE(1)(vi)."

18. The judge however continued to go on and consider Article 8 outwith the Rules and concluded that removal of the Appellant was a disproportionate interference with the Appellant's Article 8 rights.

### **The Grounds of Appeal**

19. There is one ground of appeal under the heading "Making a Material Misdirection of Law. It reads:-

"The assessment of relocation was otiose bearing in mind that the Appellant was found to not be at risk on return to his home area. It is unclear how the Appellant's claimed mental health problems amount to a Convention reason such that he is to be recognised as a refugee"

20. The finding of very significant obstacles is challenged on the basis that "there is no evidence that the Appellant made a valid application in this category ...". It is also challenged on the basis that:

"The FTTJ has failed to give adequate reasons for this finding in light of the fact that the Appellant failed to disclose the presence of family members in Kabul to the medical expert. They did not therefore have the opportunity to assess his return in light of having family support, which is submitted makes a material difference."

21. It is also submitted that basic mental health services are available in Kabul. Section 12 of the Country Policy and Information Note Afghanistan: Medical and Healthcare Provision Version 1.0 of December 2020 is relied upon.

### **Submissions**

22. I heard oral submissions from the parties. I indicated my provisional view that there was an error in the judge going on to consider relocation on the basis that there was a finding that the Appellant was not at risk of return to his home area.
23. The thrust of Ms Isherwood's submissions was that the decision is inadequately reasoned, and the judge failed to take into account that the Appellant has family in Kabul. The decision in respect of the reasonableness of relocation is inadequately reasoned. There was no proper assessment of the medical evidence. The judge has not applied DH and in any event the appeal could not succeed properly applying DH. Ms

Isherwood relied on the CPIN of December 2018, February 2019 and March 2019. The judge did not properly assess very significant obstacles having earlier identified that the Appellant was in contact with his wife and could reconnect contact with his in-laws. The judge did not apply the correct test.

24. Ms Tobin conceded that there was an error of law but not that it was material because I proper reading of the decision indicates that the judge found that the Appellant is at risk of persecution as a result of his mental health. However, she could not remember what she said at the hearing in respect of DH. She accepted that it was not raised in the Grounds of Appeal because the case of DH was not promulgated at the time they were drafted. (The grounds were drafted for the first hearing before the First-tier Tribunal in 2019). However, her view is that despite what, if anything was said about DH, the judge went on to allow the appeal properly applying DH. If I am not with her in respect of that argument her second argument was that the judge properly considered return to Baghlan on the basis that it was not clear from the decision letter where the Appellant was to be returned, either Baghlan or Kabul.
25. She said that the challenge under Article 8 was narrow and misconceived because the judge did factor into the assessment the presence of the Appellant's in-laws in Kabul but decided that this did not make any difference to the medical/expert evidence. She drew my attention to the narrow nature of the challenge raised in the grounds which concerned inadequate reasons relating to the Appellant's parents-in-law. She submitted that there was no challenge to the credibility findings and if the decision should be remade, they should be preserved.

#### *Error of law*

26. I do not accept that the judge found that the Appellant was at risk on return of persecution on account of mental illness. This does not reflect what the judge said at [72]. It was not a ground of appeal and not a matter pursued at the hearing. It would not have been open to the judge to allow the appeal on this basis. The decision does not disclose that the judge engaged with the reasoning in DH and applied it to the facts. The judge made a clear finding that the Appellant was not at risk of persecution in his home area of Baghlan.
27. In so far as the grounds challenge the judge's assessment of the background evidence, The Country Policy and Information Note Afghanistan: Medical and healthcare provision Version 1.0 December 2020 (2020 CPIN), raised in the grounds, was effective from 9 December. The hearing took place on 19 November 2020. The evidence was not before the judge and there was no reason why she should have taken it into account. In any event, while the evidence in the 2020 CPIN, at paragraph 12, differs in some respects from the background evidence cited in the RFRL which was before the judge, neither the grounds of appeal nor Ms Isherwood in oral submissions sought to clearly identify any evidence in the 2020 CPIN which would undermine the expert's consideration of the



RFRL. Ms Reid referred to the background evidence that was before the judge and cited in the RFRL. The judge was entitled to rely on her evidence concerning this. The judge preferred her evidence to the background evidence relied on by the Secretary of State (to which Ms Isherwood draw my attention to in submissions). What weight to attach to the evidence is a matter for the judge. The decision is adequately reasoned. It was not argued that the conclusions reached by the judge and/or Ms Reid's conclusions are at odds with the country guidance.

28. There was no coherently presented argument which would lead me to conclude that the judge should have taken into account the 2020 CPIN. There was no coherent argument advanced that if the CPIN 2020 had been before the judge, it would have made any difference to the outcome of this appeal. The ground as presented to me was an attempt to reargue the case and a disagreement with the findings.
29. The grounds do not accurately represent the decision. The judge was entitled to attach weight to the evidence of the expert Ms Reid and gave a number of reasons why relocation would not be reasonable, none of which have been challenged (see [115]-[119]). Contrary to the grounds, it is unarguable that the judge did not factor into the assessment of the evidence that the Appellant's parents -in -law live in Kabul and that he had not disclosed this to the experts (I shall engage with this issue later in more detail).
30. Despite there being no material error in the assessment of relocation to Kabul, it was a wholly unnecessary exercise because it was not open to the judge to allow the appeal on protection grounds, because she made an unequivocal finding that the Appellant is not at risk on return to his home area, to which there is no cross challenge.
31. Whether return to Baghlan was reasonable was neither here nor there. (It was not stated by Ms Tobin that the Appellant's case was that there was a risk of return to the Appellant's home area under Article 15(c) (which is not supported by the evidence of Ms Reid). This would accord with the grounds of appeal before the First-tier Tribunal. It was not open to the judge to allow the appeal on protection grounds. The judge materially erred in allowing the appeal on protection grounds.
32. In so far as the finding under paragraph 276ADE (1) (vi) of the Immigration Rules is concerned, it is not material that the Appellant did not make an application in this category. Ms Isherwood did not pursue this line of challenge. However, the challenge on the basis that the decision is inadequately reasoned was maintained. It was argued that the judge did not take into account material matters; namely, that the Appellant had failed to disclose to the medical expert that he has family in Kabul. The judge at [128] acknowledged that Dr Singh's conclusions are not "focused solely or mainly on the emotional and practical supports (sic) which the Appellant receives from his siblings in the United Kingdom, a role his parents- in -law could undertake in Afghanistan". The judge attached weight to the evidence of Dr Singh that the Appellant "needs treatment

and interventions and if he cannot obtain such treatment in Afghanistan, it is likely that the Appellant will experience a significant deterioration in his mental health". The judge considered this evidence in the context of Ms Reid's evidence, which was accepted. Notwithstanding that the Appellant could live with his parents-in-law, the judge found that there is a real risk that he will be unable to access the mental health services and treatment that he needs to manage his condition.

33. The judge gave adequate reasons why she found that there would be very significant obstacles to integration. She accepted that there would be a significant deterioration in the Appellant's health. The decision is adequately reasoned at (see [135]). Ms Isherwood said that the judge did not apply the correct test. The grounds, however, contain a reasons challenge and do not raise the application of the correct test. In any event, the judge properly directed herself at [134] and she applied a broad evaluative judgement to the evidence. The judge accepted the medical evidence and the evidence of Ms Reid. There is no challenge to specific findings or to the application of the law in the grounds of appeal.
34. I set aside the decision of the judge to allow the appeal on protection grounds. There is no reason to go behind the decision of the judge to allow the appeal under Article 8 on the basis that there are insurmountable obstacles to integration. That decision is maintained.

### **Notice of Decision**

The Appellant's appeal is dismissed on protection and humanitarian grounds.

The Appellant's appeal is allowed on Article 8 grounds.

### **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 their 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 Joanna McWilliam  
Upper Tribunal Judge McWilliam

Date 17 May 2021