



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003131

First-tier Tribunal No: PA/01286/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 7th of November 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

NS
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Hussain (Via Microsoft Teams) instructed by Duncan Lewis & Co, Solicitors.

For the Respondent: Mr C Bates, a Senior Home Office Presenting Officer.

Heard at Manchester Civil Justice Centre on 12 October 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. In a decision promulgated on 19 July 2023 Upper Tribunal Judge Jackson found legal error material to the decision of the First-tier Tribunal which dismissed the appellants appeal against the refusal of his protection and human rights claim,

- in the context of an application to revoke a deportation order made against him dated 29th December 2020.
2. The appellant is a citizen of Afghanistan born 1 June 1992 who entered the UK in 2006 aged 14. The appellant's claim for asylum was refused on 25 October 2006 although he was granted leave to remain as an unaccompanied asylum seeking minor valid to 25 October 2009. A further application for leave to remain was refused but his appeal against that refusal successful in that it was allowed on asylum and Article 3 grounds by the First-tier Tribunal on 27 August 2010, as a result of which the appellant was granted leave to remain as a refugee to 13 March 2016.
 3. The appellant is subject to an order for his deportation from the UK as a result of his criminality. He was convicted for robbery on 8 July 2011 for which he was sentenced to 2 years imprisonment in a Young Offenders Institute. The appellant was given notice of intention to deport him on 27 July 2011. Deportation was not pursued although the appellant was given a warning letter in relation to his future conduct.
 4. Notwithstanding, the appellant committed further criminal offences, for which he was convicted in September 2013, which resulted in a further warning letter but no further action.
 5. Further criminal convictions are recorded from January 2015 and the service of a further notice of liability to deport on 28 October 2015.
 6. A settlement application made by the appellant on 16 May 2017 was rejected on 31 August 2017.
 7. On 18 October 2017 the Secretary of State made a decision to refuse the appellant's human rights claim and a decision to cease his refugee status. The appellant's appeal against that decision was allowed by the First-tier Tribunal on 1 December 2017 on protection grounds but that decision overturned by the Upper Tribunal which dismissed the appeal on 4 July 2018. The appellant became appeal rights exhausted on 18 February 2019 and the Deportation order was signed on 8 November 2018.
 8. Further submissions made by the appellant on 27 April 2019 but rejected by the Secretary of State on 22 May 2019. An application for permission to judicially review the refusal was dismissed on 24 May 2019. Further submissions made on 29 April 2019 were refused on 22 May 2019 against which the appellant, unsuccessfully, applied for judicial review.
 9. The latest submissions were made on 17 November 2019 which were originally refused, but following an application for judicial review were reconsidered by consent, leading to the decision which is subject of this appeal, dated 29 December 2020.
 10. Upper Tribunal Judge Jackson found a material error of law in relation to Ground 2 and 3 of the grounds seeking permission to appeal. In relation to those grounds she writes at [29-30]:
 29. I do however find an error of law on the second ground of appeal and that there was no separate assessment of the Appellant's mental health for the purposes of assessing whether he was at risk on return to Afghanistan because of it, in accordance with DH (Particular Social Group: Mental Health) [2020] UKUT 223; which may still be of relevance even for a fluctuating condition and needed to be separately addressed. Further, there was no specific consideration of the Appellant's ability to relocate to and integrate in Kabul on account of mental health, which again requires separate consideration even with a fluctuating condition. These issues were specifically raised in the Appellant's skeleton argument as part of his asylum claim (as well as his claim for humanitarian protection and in respect of Article 3 of the European Convention on Human Rights) but was simply not

addressed or determined by the First-tier tribunal. Although it is accepted by the parties, there will also need to be expressed consideration of the section 72 certificate in the first instance which the First-tier Tribunal also failed to address.

30. The third ground of appeal relates to the First-tier Tribunal's assessment of the humanitarian situation in Kabul since the Taliban took control and to some extent overlaps with the second ground of appeal given that the Appellant relies on his history of poor mental health to identify him as a person who may be particularly vulnerable to serious harm for that reason. For the reasons set out above, this has not been directly addressed by the First-tier Tribunal which is an error of law. The second part of this ground of appeal is that the First-tier Tribunal erred in law in relying on the Appellant having a sister in Kabul who could assist him, without consideration that she was married and now part of her husband's family. The First-tier Tribunal's finding was however that the Appellant had family who could assist him in Kabul, not limited to his sister but also included his uncle, a close male relative and that he would be able to live with a family member (not specifically his sister). Given the wider finding, there is no error of law whether a married female relative would practically be able to assist the Appellant as there was in any event a close male family member as well. The First-tier Tribunal gave clear and cogent reasons for rejecting the Appellant's claims as to family members and contacting paragraphs 47 to 51.

11. The scope of this hearing is that set out by Judge Jackson at [34] in which she wrote:

34. For the reasons set out above, First-tier Tribunal materially erred in law in respect of the second ground of appeal and to some extent the third ground of appeal and that there was a failure to consider the Appellant's history of fluctuating mental health problems beyond a strict assessment under Articles 3 and 8 of the European Convention on Human Rights; of all findings as to whether he was at risk on return on that basis either as a member of a particular social group, based on deteriorating humanitarian conditions in Kabul or generally as a matter of reintegration on return. I do not find an error of law on any of the other grounds of appeal. Due to the nature of the errors found, the findings of fact of the First-tier Tribunal can be preserved in full, all that is needed is a further decision on the matter is not addressed in that decision, which will also entail consideration of the section 72 certificate. That does not however preclude any further up-to-date evidence (and findings) of matters that have changed since the First-tier Tribunal decision which was in early 2022 which may reasonably be expected given some time has now passed since the immediate aftermath of the Taliban takeover in Afghanistan and the Appellant's fluctuating mental health. Directions for further hearing in the Upper Tribunal are given below.

12. Following the making of a Judicial Transfer Order the matter comes before me for the purposes of substituting a decision to either allow or dismiss the appeal.

13. The First-tier Tribunal judge was not satisfied the appellant will be of any interest to the Taliban.

Discussion and analysis

The Section 72 certificate

14. Article 33 (1) of the Refugee Convention provides that no contracting state shall expel or return a refugee to the frontiers of a territory where his life or freedom might be threatened on account of a Refugee Convention reason. Article 33 (2) provides that the benefit of Article 33 (1): "May not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final

- judgement of a particularly serious crime, constitutes a danger to the community of that country”.
15. Section 72 of the Nationality, Immigration and Asylum Act 2002 incorporates into domestic law Article 33(2) and creates a rebuttable presumption of a particularly serious crime and a danger to the community.
 16. In Secretary of State for the Home Department v TB (Jamaica) [2008] EWCA Civ 977 the Court of Appeal found that by virtue of the presumption at section 72(2) when construing and applying Article 33 (2), a person shall be deemed to have been convicted by a final judgement of a particularly serious crime and to constitute a danger to the community of the United Kingdom if he is convicted in the United Kingdom of an offence and sentenced to a period of imprisonment of at least two years. The Court of Appeal found these presumptions apply irrespective of whether a certificate under section 72(9) had been issued and that once the facts giving rise to the statutory presumption had been established it will be an error in law for a judge to fail to apply the presumption required by section 72.
 17. In AQ (Somalia) v Secretary of State the Home Department [2011] EWA Civ 695 the Court of Appeal upheld the conclusion in TB (Jamaica) that the section 72 presumption applies regardless of whether the Secretary of State had issued a certificate under section 72(9). It was found the Secretary of State was not under any obligation to issue a certificate in order for the presumption to take effect with the certificate having a limited procedural effect of requiring the Tribunal to first address the certificate and any issues as to the rebuttal of the presumption which was of general application.
 18. In Secretary of State the Home Department v Al-Siri [2021] EWCA Civ 113 the Court of Appeal surveyed the authorities relating to Article 33 and concluded that TB (Jamaica) was to be followed.
 19. In the refusal letter in the current appeal there is no reference to exclusion under the Refugee Convention only in relation to Humanitarian Protection – Article 2 and Article 3 ECHR. It is stated that as a result of the appellant’s conviction and imprisonment he is excluded from a grant of Humanitarian Protection under paragraph 339 D (iii) of the Immigration Rules.
 20. Paragraph 339 reads:

Exclusion from humanitarian protection

339D. An asylum applicant is excluded from a grant of humanitarian protection for the purposes of paragraph 339C(iv) where the Secretary of State is satisfied that there are serious reasons for considering that the asylum applicant:

- (i) has committed, instigated or otherwise participated in the commission of a crime against peace, a war crime, a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; or
- (ii) has committed, instigated or otherwise participated in the commission of a serious non-political crime outside the UK prior to their admission to the UK as a person granted humanitarian protection; or
- (iii) has been guilty of acts contrary to the purposes and principles of the United Nations; or
- (iv) having been convicted by a final judgement of a particularly serious crime (as defined in Section 72 of the Nationality, Immigration and Asylum Act 2002), constitutes a danger to the community of the UK; or
- (v) is a danger to the security of the UK.

339DA. In 339D(ii):

- (i) the reference to a serious non-political crime includes a particularly cruel action, even if it is committed with an allegedly political objective; and
- (ii) the reference to a crime being committed by a person outside the UK prior to their admission to the UK as a person granted humanitarian protection includes a crime committed by that person at any time up to and including the day on which they are issued with a relevant biometric immigration document by the Secretary of State.

21. The first thing to note is that the exclusion provision in paragraph 339 D is broadly similar to those in Article 1F of the Refugee Convention. The refusal letter specifically refers to 339 D (iii) which in the current version of the Rules refers to a person being guilty of acts contrary to the purposes and principles of the United Nations. Such is not made out.
22. The refusal specifically states “as you were sentenced to 9 months imprisonment as above for sexual assault – intentionally touch female – no penetration, you fall within the exclusion criteria set out in Rule 339 D (iii), claiming exclusion under that provision of the rules is mandatory.
23. An earlier version of paragraph 339D read:

“A person is excluded from a grant of humanitarian protection for the purposes of paragraph 339C (iv) where the Secretary of State is satisfied that:

- (i) there are serious reasons for considering that they have committed a crime against peace, a war crime, a crime against humanity, or any other serious crime or instigated or otherwise participated in such crimes;
- (ii) there are serious reasons for considering that they are guilty of acts contrary to the purposes and principles of the United Nations or have committed, prepared or instigated such acts or encouraged or induced others to commit, prepare or instigate such acts;
- (iii) there are serious reasons for considering that they constitute a danger to the community or to the security of the United Kingdom; or
- (iv) there are serious reasons for considering that they have committed a serious crime; or
- (v) prior to their admission to the United Kingdom the person committed a crime outside the scope of (i) and (iv) that would be punishable by imprisonment were it committed in the United Kingdom and the person left their country of origin solely in order to avoid sanctions resulting from the crime”.

24. Insofar as it is the earlier version of the Rules that is applicable, the appellant is excluded from a grant of humanitarian protection but as noted by Mr Bates, this is not an issue being considered. The Schedule of issues to be determined in the appeal is set out by Mr Hussain in his skeleton argument as follows:

15. The issues to be determined in this appeal are:

- a) Mental health as PSG - DH (Particular social group: mental health) Afghanistan [2020] UKUT 223 (IAC):
 - Can A relocate to and integrate in Kabul on account of mental health
- b) Would removal be contrary to Article 3 ECHR?
 - Mental health and suicide grounds?
- c) Would removal be contrary to Article 8 ECHR?

- Are there very compelling circumstances that outweigh deportation.

25. In relation to section 72. I agree with Mr Bates that on the facts at one struggle to see the rationality of the same which is, perhaps why it was not referred to in the refusal decision.
26. The appellant was granted refugee status, but such protections ceased as a result of a significant change in Afghanistan, on the basis his fear is based upon an imputed political opinion, yet such fear had been eradicated, and that he did not qualify for protection of any other basis.
27. There are preserved findings from the First-tier Tribunal decision which includes the finding the appellant would not face a real risk of persecution by reason of his past history for the reasons set out at [37] of that decision. The First-tier Tribunal was not satisfied the Taliban have or would have any interest in the appellant by reason of events prior to his departure from Afghanistan in 2006 or link him with any Hezb i Islami activities in which his father might have engaged prior to 1996. The First-tier Tribunal did not find it made out that the number or severity of incidents in Afghanistan show that a man with the appellant's profile, that is to say one who is clean-shaven, wears Western clothes, and has lived in the United Kingdom for a number of years, would be at real risk on return of treatment amounting to persecution or breaching Article 3 of the 1950 Convention.
28. The First-tier Tribunal was not satisfied a returning asylum seeker, even if recognised as such, would necessarily be regarded as opposed to the Taliban or holding or having rejected the political view that would place them at risk on return. The First-tier Tribunal found nothing in the appellant's 2022 witness statement to explain how the Taliban would learn of his criminal record in the UK or would be significant in their assessment of him. The judge gives ample reasons at [44] why the appellant did not fall within identified risk factors published by the UNHCR and elsewhere.
29. In the event, as noted above, the issues in this field do not include a protection appeal distinct from the mental health issues.
30. The first of the issues identified by Mr Hussain makes reference to the decision of the Upper Tribunal of DH (Particular Social Group: mental health) Afghanistan [2020] UKUT 223 (IAC), the head note of which reads:

1. The Geneva Convention relating to the Status of Refugees 1951 provides greater protection than the minimum standards imposed by a literal interpretation) of Article 10(1)(d) of the Qualification Directive (Particular Social Group). Article 10 (d) should be interpreted by replacing the word "and" between Article 10(1)(d)(i) and (ii) with the word "or", creating an alternative rather than cumulative test.

2. Depending on the facts, a 'person living with disability or mental ill health' may qualify as a member of a Particular Social Group ("PSG") either as (i) sharing an innate characteristic or a common background that cannot be changed, or (ii) because they may be perceived as being different by the surrounding society and thus have a distinct identity in their country of origin.

3. A person unable to secure a firm diagnosis of the nature of their mental health issues is not denied the right to international protection just because a label cannot be given to his or her condition, especially in a case where there is a satisfactory explanation for why this is so (e.g. the symptoms are too severe for accurate diagnosis).

4. *The assessment of whether a person living with disability or mental illness constitutes a member of a PSG is fact specific to be decided at the date of decision or hearing. The key issue is how an individual is viewed in the eyes of a potential persecutor making it possible that those suffering no, or a lesser degree of, disability or illness may also qualify as a PSG.*

5. *SB (PSG – Protection Regulations – Reg 6) Moldova CG [2008] UKAIT 0002 and AZ (Trafficked women) Thailand CG [2010] UKUT 118 (IAC) not followed.*

31. Following the coming into force of the Nationality and Borders Act 2022 the definition of a Particular Social Group is now set out in section 33, requiring the cumulative test to be demonstrated although such changes do not apply to asylum claims lodged before 28 June 2022.
32. The appellant has provided an updated psychiatric report written by Dr Sahota whose expertise was not challenged before me. Dr Shota was able to interview the appellant on 18 September 2023 for about 90 minutes. At [24] Dr Sahota writes he regards what the appellant told him, information in the letter of instruction and medical notes as assumed facts as he has no personal knowledge of the assumed facts except as reported in the psychiatric interview.
33. Dr Sahota was asked a number of specific questions by the appellant's solicitors and sets out both those questions and his response in the Opinion section of the report in the following terms (amended in accordance with the anonymity direction only):

My opinion

98. *Please confirm that you have read the relevant material;*

99. I confirm I have read the relevant material.

100. *Please comment on the client's current mental health;*

101. NS suffers from chronic anxiety and depression characterised from low mood, lack of interest, hopeless thoughts, appetite and sleep disturbance. These symptoms are supported by his clinical presentation at Interview and his medical records in primary care, including documents from mental health services as listed in Appendix.

102. NS's mental disorder is an adjustment reaction which is maintained by the stress associated with underlying immigration proceedings, including lack of employment opportunities, stable accommodation and family life.

103. NS has underlying psychological trauma from events in Afghanistan many years ago, with reliving experiences, memory loss and flashbacks. In my opinion, there is evidence of unprocessed psychological trauma which is increasing his vulnerability to mental disorder.

104. There is evidence of dysfunctional coping as part of his personality with chronic cannabis substance misuse and poor anger control. I note there is a history of antisocial behaviour leading to criminal prosecution. In my opinion, NS's diagnosis is PTSD with comorbid Recurrent Depressive Disorder. The medical records show that he suffers from a chronic form of depression with an episode of depression following the loss of his mother in 2019, which worsened during period in detention. He continues to experience symptoms of depression in the context of immigration proceedings. It is difficult to estimate the number of episodes given the available information, however given the chronicity and severity disorder the medical evidence amounts to a recurrent depressive illness rather than a single episode of depression.

105. *Please comment on any suicide ideation/ self-harm incidents*

106. NS said he last hurt himself when his mother died in 2019. I note this incident was reported previously to health professionals. He said he had a flashback and nearly stabbed himself before a friend intervened in 2019.

107. NS reported ongoing suicidal thoughts in response to frustration regarding his immigration process and hopelessness regarding his future. These thoughts are chronic but stable and unlikely to impact on risk of actual harm unless in an acute crisis, or for example if he has a negative-immigration decision. There are no significant or serious incidents of self-harm of note. He reported one incident where he attempted to harm himself with a high risk method but was intercepted by a friend. There are no recent self-harm incidents of note. He is making threats of taking his life in the event of returning to Afghanistan which is a reflection of his level of anger and distress. Whilst the threat of self-harm is not associated with any current intent or suicidal act or plan, in the context of an extreme state of anger, helplessness or feelings of entrapment, the risk of impulsive or reckless behaviour is significant. This risk is unlikely to change given his personality characteristics and is most appropriately managed by addressing his underlying mental health and psychological trauma.

108. *In your professional opinion do you think he is at a heightened risk of making an attempt on his life and whether this risk is likely to elevate should he be returned to Afghanistan.*

109. NS is at risk of acting impulsively in response to intolerable feelings of distress or rejection. This is historical evidence of anger dyscontrol, dysfunctional coping and suicidal behaviour. This risk is chronic and stable but is likely to increase 25 during removal and upon arrival. The risk can be mitigated with stabilisation of mental disorder to build resilience and capacity for exercising restraint.

110. NS has not committed a serious self-attempt which places him in the low risk of suicide.

111. *Clinically assess the client's ability to give evidence on the issue in an open court.*

112. *NS said he does not know what is going to happen. He said he knew nothing about the system when he came to UK. He said he has been fighting the immigration system all his life; he feels supported by his Solicitor.*

113. NS has a basic understanding of immigration process. He has cognitive skills to following proceedings. His attention, concentration and memory are within the normal range for the purposes of instructing counsel and following court proceedings in a meaningful way. He does not require any additional measures aside from the usual, such as taking regular breaks to check his understanding and to ensure that any stress associated with proceedings is minimized.

114. *Please comment on whether the client may be feigning or exaggerating his symptoms.*

115. NS has longstanding problems with his mental health. The clinical presentation of his mental disorder over time is consistent with a person who has psychological trauma associated with mental health difficulties, namely flashbacks, anxiety and low mood. While the possibility of exaggeration cannot be entirely excluded given the circumstances of the immigration, my overall impression is that NS has a chronic mental disorder on the balance of probabilities. The risk of selfharm or suicide may be exaggerated or heightened for the desired effect or for secondary gain.

116. *Please comment on any improvement/deterioration to the clients mental health and [if able] since his last assessment.*

117. NS is not actively receiving treatment for his mental disorder. He is struggling with isolation from his peer group, withdrawn behaviour, lack of employment or family opportunities. In my opinion, these psychosocial stressors are maintaining the mental disorder. My overall clinical impression is that the severity of the mental disorder has not materially changed since psychiatric assessment by Dr Kashmiri.

118. *Please comment on any reasons/causational factors for any improvement/deterioration.*

119. As above, the psychosocial stressors are maintaining the mental disorder.

120. *Please comment as to whether you feel is various periods in immigration detention have impacted his mental health and to what extent.*

121. There is evidence that the mental disorder worsened in detention setting with an exacerbation of PTSD and depressive symptoms. He was placed on ACDT and referred to Healthcare.

122. *Please comment, to what extent you are able, the impact the client's mental health may have on his ability to relocate to Afghanistan and establish himself in country he left in 2006 aged 14.*

123. NS is settled in the United Kingdom notwithstanding the uncertainty regarding his future and lack of certainty in personal life. In my opinion, adaptation to life in a country where he has not resided for decades, where he left as a minor and where he has no family links, is likely to be a major challenge for him at this stage his life given his mental disorder, and personality difficulties in the form of dysfunctional behaviour.

124. *Please comment, to what extent you are able, as to whether removal/deportation is likely to have an adverse impact on our client's mental health.*

125. Removal to Afghanistan is likely to have a detrimental impact on his mental disorder on the balance of probabilities, in my opinion. The degree and permanence of the damage to his mental health is difficult to predict as it will depend on a number of factors, including any treatment or mitigation that could be put in place particularly during removal and in the first few weeks and months of his arrival, as well as access to appropriate healthcare, family support and accommodation. Of particular concern is the persistent fear of persecution.

126. *Do you consider the client is fit to fly as per current aviation guidelines (UKCAA guidelines)*

127. NS is fit to fly as per aviation guidelines as the mental disorder is stable; there are no acute physical health conditions medications that could prevent him from travelling. There is a risk of abnormally aggressive behaviour or impulsivity given his mental health, anger symptoms and personality problems. This risk can be mitigated with careful planning, medication treatment optimization and support from a trained professional in mental health during removal process.

128. *Do you consider the client as an 'adult at risk' for the purposes of detention management?*

129. NS is an adult at risk for the purposes of detention as a victim of psychological trauma, chronic mental disorder and ongoing symptoms of PTSD namely, flashbacks.

130. *-Please comment on the impact, if any, that the repeated delays and ongoing issues in both his asylum and appeal matters have had on the Client*

131. Uncertainty regarding his future is undoubtedly having a negative and maintaining impact on his recovery from mental disorder as described.

34. Dr Sahota refers to an earlier psychiatric assessment undertaken by Dr Kashmiri, a Consultant Psychiatrist, whose reports have been considered although not set out.

35. It is not disputed before me that the appellant has fluctuating mental health issues. He is a low risk of suicide. He coped admirably with being cross-examined by Mr Bates which was suitably tailored to meet his needs. The focus of the cross-examination related to whether there was contact between the appellant and family members in Afghanistan. The appellant confirmed had spoken to his sister about a month ago and was asked questions about his uncle who lives in Kabul.

36. The factual findings by the First-tier, which are preserved, including those relating to the appellant's claim to have no contact with family in Kabul. In relation to that matter the First-tier Judge found at [49-50]:

49. I am not satisfied that the Appellant was telling the truth:

- a) when he gave evidence that he now has no contact with his sister;
- b) when he said that he has no way of contacting his sister;
- c) when he said that he does not know where his sister now is;
- d) when he gave evidence that he had not spoken to his uncle since he (Appellant) had left Afghanistan in 2006;
- e) when he gave evidence that he does not know how to contact his uncle; or
- f) when he gave evidence that he does not know the location of his uncle's house.

50. I am not satisfied that I've been told the truth about the Appellant's contact with relatives in Afghanistan or what he knows of their whereabouts. There is insufficient sound evidence for me to depart from the Upper Tribunal finding that the Appellant has close family in Kabul in 2018 or to find other than that he has close family there now. Consequently are not satisfied that the Appellant would be without family support on return there.
37. I do not find the appellant established on the evidence that it is appropriate to depart from these earlier findings in accordance with the Devaseelan principle. The appellant accepted he has had some contact with his sister who was involved in the appellant's care until she married, who would also have had contact with their mother who lived with the uncle and so would have known where the family are. It is not made out the appellant would not be able to trace his family in Kabul or that family members there will be unable to accommodate him or provide support to him whilst he re-established himself in Kabul.
38. Mr Bates submitted that the statement in the expert report, based upon the appellant's account, that he had no contact since 2019 was contradicted by both the appellant's written and oral evidence.
39. In relation to Mr Hussain's argument and whether the appellant could succeed by reference to DH (Particular Social Group) is important to note that the fluctuating nature of an individual's illness is not a bar to an individual succeeding, but it was specifically found in that case that it was agreed that there must be a serious mental illness.
40. Although the appellant has received a diagnosis, he has not established that it reaches the degree of severity such that it is an innate characteristic, a background that cannot be changed, or that he would be perceived as being different in the surrounding society as a result of his illness. The appellant in DH was seriously ill to the extent that his behaviour as a result of his illness, exposing his genitals in a public place to both men and women (including at court), is what led to the finding of real risk on return.
41. Even if it was proved a person is a member of a particular social group it would still need to be established that that person will face a real risk of persecution or ill-treatment as a result of such membership. Although there is country information indicating that discrimination can occur against those with mental health issues in Afghanistan it was not made out that the appellant faces a real risk of persecution or ill-treatment on return as a result of his illness on the facts.
42. The answer to the first of Mr Hussein's questions, whether the appellant can relocate to and integrate in Kabul on account of his mental health, is yes, subject to the answer to the second and third questions posed.
43. In relation to the question would his removal will be contrary to Article 3 ECHR on the basis of his mental health, including the issue of suicide, the leading case in relation to medical issues is AM (Zimbabwe) [2020] UKSC 17 in which that Court, in approving the judgement of the Grand Chamber of the European Court of Human Rights in Paposhvili v Belgium (application no 41738/10), said that the reduction in life expectancy had to be substantial but what was substantial will depend on the person and their age. However it did not mean simply the imminence of death and an applicant had to adduce evidence capable of demonstrating that there were substantial grounds believing that Article 3 would be violated which was a demanding threshold.
44. The Supreme Court approved what had been said by the Upper Tribunal in AXB (Art 3 health: obligations: suicide) Jamaica [2019] UKUT 397 when considering

the case of *Savan v Denmark* (application no 57467/15), in which the Tribunal held:

(i) In a case where an individual, asserts that his removal from the Returning State would violate his Article 3 ECHR rights because of the consequences to his health, the obligation on the authorities

of a Returning State dealing with a health case is primarily one of examining the fears of an applicant as to what will occur following return and assessing the evidence. In order to fulfil its obligations, a Returning State must provide “appropriate procedures” to allow that examination and assessment to be carried out. In the UK, that is met in the first place by an examination of the case by the Secretary of State and then by an examination on appeal by the Tribunal and an assessment of the evidence before it;

(ii) There is no free-standing procedural obligation on a Returning State to make enquiries of the Receiving State concerning treatment in that State or obtain assurances in that regard. Properly understood, what is referred to at [185] to [187] of the Grand Chamber’s judgment in *Paposhvili* concerns the discharge of respective burdens of proof;

(iii) The burden is on the individual appellant to establish that, if he is removed, there is a real risk of a breach of Article 3 ECHR to the standard and threshold which apply. If the appellant provides evidence which is capable of proving his case to the standard which applies, the Secretary of State will be precluded from removing the appellant unless she is able to provide evidence countering the appellant’s evidence or dispelling doubts arising from that evidence. Depending on the particular circumstances of the case, such evidence might include general evidence, specific evidence from the Receiving State following enquiries made or assurances from the Receiving State concerning the treatment of the appellant following return.

45. The reports above set out the appellant’s health needs and treatment. Personality and behavioural difficulties not susceptible to treatment by way of medication or medical intervention appeared to be further issues for the appellant but it was not made out these could not be met or managed.

46. Mr Hussain also relies upon the decision of the Upper Tribunal in *AS (Safety of Kabul) Afghanistan CG* [2018] UKUT 118 (IAC) which acknowledged structural deficiencies in relation to accessing healthcare in Kabul. Specific reference is made to [142 – 144], where it is written :

“142. In summary, that report recorded evidence that Afghanistan had made progress in providing healthcare, but serious obstacles persisted. A Basic Package of Healthcare Services system was introduced in 2003 with the aim of providing the minimum essential health services in all primary health-care facilities. The Essential Package of Hospital Services followed in 2005. These have improved the situation but there is inequality of access to healthcare for women (due to a lack of female health care professionals) and those in rural areas; there are financial barriers to individuals and problems of corruption, insecurity and poor regulation. Separately there is a private healthcare system, but it is very expensive.

143. In terms of mental health care, the same EASO Report recorded very high levels of mental health problems in Afghanistan (particularly depression, anxiety and PTSD) creating significant needs but that there was a lack of trained professionals (psychiatrists, social workers, psychologists) and an inadequate infrastructure. Although the Public Health Minister reported that psychological services were available at some 1,500 health centres around the country with 300 dedicated mental health clinics; there was only one dedicated mental health hospital in Kabul and Samuel Hall’s study in 2016 referred to there being only three trained psychiatrists and ten psychologists in the whole of Afghanistan.

144. In Kabul specifically, there is better access to healthcare than in the provinces and the most qualified staff work there with specialist clinics and hospitals; albeit there is still significant room for improvement. There remains a shortage of equipment and demand which outstrips supply. Nearly half of Kabul residents cannot afford medical treatment (as patients need to buy their own medicines and, in any event, pharmacies are poorly equipped). There are also instances of health facilities being targeted by armed groups, including in Kabul.”
47. Points, which Mr Hussain submits have been reiterated recently by the Upper Tribunal in AS (Safety of Kabul) Afghanistan CG [2020] UKUT 00130(IAC) at [241 – 242] which Tribunal wrote:
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.
48. The appellant has also produced a report written by Dr Ahmad a Senior Lecturer in Global Health at St Georges University of London, dated 6 May 2021. Dr Ahmed refers to mentally ill people facing stigmatisation, discrimination and social exclusion, that mental health is a concept daily in Afghanistan and is aligned with shame for treating those with mental illness.
49. Those findings were not disputed before me by Mr Bates although it is not the case it was made out that the appellant will be isolated or excluded as he will have the support of his family in Afghanistan. Whilst in some cases, particularly where serious mental health issues arise, chemical or mechanical constraints may be required to treat a person with illness it was not made out that the appellant will fall within a category of those requiring the same.
50. Dr Ahmed does, however, comment upon whether the appellant subjectively will be at risk on return due to his mental health in which it is written (duly anonymised):
- “14.1. Without a family or strong network, it will be extremely difficult for NS to establish a place to live and a job even in Kabul, which requires a known network to be able to access. Due to the over-population of Kabul and strain on public services including accommodation, it is very challenging for someone who is not from Kabul to find resources. In Kabul, accessing estate agents, for example, costs money and thus NS would need to find accommodation through a network, and similarly, for employment.
- 14.2. Poverty is a known factor to affect mental health and chronic poverty in Afghanistan is a defining marker of the country's poor mental health profile and persons with disabilities are among the most deprived among Afghan society (Trani et al, 2016).
- 14.3. In a study conducted with Afghan asylum seekers in Turkey, the causal process between poverty and mental distress was highlighted, concluding that ‘the degree of distress reported was found to be associated with the rampant levels of unemployment and inadequate income’ and ‘much of the influence of employment and income is mediated by both health status and post-migration living difficulties’ (Alemi et al, 2016). It was also noted that as it is mostly young, single men who leave Afghanistan to seek asylum and suffer the loss of social support such as their family, Afghan men are a highly vulnerable group suffering

from an 'ongoing cycle of poverty, poor health, and psychopathology' (Alemi et al, 2016).

- 14.4. The likelihood of destitution given the lack of financial resources or support network, and the impact of NS's mental illness being at risk of worsening in Afghanistan.
 - 14.5. In view of the conclusions from AS [Afghanistan] an individualised case-by-case assessment is required, taking into account an individual's 'personal circumstances including factors such as his age, health, disability, languages spoken, educational and professional background, length of time outside of Afghanistan, connections to and experience of Kabul and family situation and relationships'
 - 14.6. NS's personal circumstances include having left Afghanistan prior to adulthood and a significant period of time spent in the United Kingdom, mental health disability, poor educational background with no formal or vocational qualifications, his western identity no family ties or support network in Afghanistan. Even though it is noted in Dr Kashmiri's psychiatric report that NS has a sister who is married in Afghanistan, in my professional opinion I would not consider his sister to constitute adequate support. In Afghan society and culture, when a woman is married, she becomes part of the family she is marrying into. Thus, NS's sister would have very little agency or ability to advocate that her family provides support for NS and given the financial burden that he will place on the family as well as the stigmas related to his mental health plus risks associated with his western identity, it is highly unlikely that his sister could offer support.
 - 14.7. The evidence of NS's mental health conditions, which has been provided by his GP and in a psychiatric assessment, shows that NS is extremely vulnerable and such vulnerabilities will impair on his ability to reintegrate and manage living in Afghan society as a single man with mental illness, and will do so in ways that are different to the existing population in Afghanistan because NS has unique and further experiences due to his experience as an asylum seeker. NS will be less capable than other Afghans in Afghanistan to seek employment and to navigate the socio-cultural context for mental illness because of his age when leaving Afghanistan and the impact of his poor mental health, as well as the lack of available mental health care and overall support.
 - 14.8. Thus, there is overall significant risk related to the consequences of stigma for individuals such as NS who suffer from mental illness and the extreme likelihood that he would be destitute and homeless in Afghanistan.
51. The first thing to note about the expert's opinion is that an emphasis is placed upon the risk the appellant will face without family or a strong network. It is a preserved finding that such network exists and that he is in contact with his family with no evidence they would not be to provide assistance, including accommodation, for him.
 52. It is not made out on the evidence the appellant will face poverty or destitution as he will have family to assist.
 53. I agree with Dr Ahmed that a case-by-case assessment is required. I accept the appellant left Afghanistan when he was very young and spent a considerable period of time in the UK, with no evidence of formal or vocational qualifications. At [14.6] Dr Ahmed again refers to the appellant's claim that the appellant has no family ties or support network in Afghanistan which is contrary to the preserved finding that he does. Even if Afghan culture means that his sister, who is married in Afghanistan, has become part of the family she is marrying into, with little ability or wish to provide for the appellant, it is not made out that his uncle, a male relative of the appellant will be in a similar situation.
 54. I accept the appellant is likely, as a result of being returned to Afghanistan, to suffer deterioration in his mental health identified in the medical evidence. I accept that will make him vulnerable on return as he reintegrates and learns to

live in Afghan society again. It may be that initially, without the support of family directly or through their contact, he might find it difficult to obtain employment, but the appellant has not been shown not have such support. The conclusion of Dr Ahmed at [14.8] that there is a significant risk related to the consequence of stigma for individuals such as the appellant who suffer from mental illness and an extreme likelihood the appellant would be destitute and homeless in Afghanistan is not made out on the evidence.

55. It is not made out that the situation in Kabul, at the date of this hearing, is a situation of internal armed conflict. A lot of the difficulties in the past were attacks in Kabul and other parts of the country by the Taliban seeking to overthrow the previous government. Referencing in Dr Ahmed's evidence to reports dated 2020, 2019, and undated events, all appear to relate to the period prior to the Taliban takeover of the government in Afghanistan.
56. As the appellant has family it is not made out he will be required to settle in one of the camps for internally displaced people.
57. The Secretary of State relies upon the Country Policy and Information Note, Afghanistan: Medical treatment and healthcare, version 2.0, October 2021 which refers to the situation of healthcare in Afghanistan following the Taliban. In relation to mental health it is written:

4.4 Mental health

4.4.1 An April 2020 report by HRW noted: 'Mental health services are especially lacking... there are critical gaps in the availability and quality of psychosocial support and mental health services in Kabul and other cities, while in rural areas they are virtually nonexistent. Afghanistan lacks trained personnel in all areas of mental healthcare provision – psychiatrists, psychiatric nurses, psychologists, and social workers. The stigma associated socially with psychosocial disabilities (mental health conditions) is also a significant barrier for people seeking support.'

4.4.2 The UNOCHA noted in its December 2020 report that: 'Four decades of uninterrupted conflict, recurrent natural disasters, endemic poverty and now the COVID-19 pandemic's fallout have taken a brutal toll on the mental health and personal resilience of the people of Afghanistan. While no comprehensive study has been able to quantify the magnitude of the impact of repeated exposure to traumatic incidents, it is conservatively estimated that over half of the population suffer from some form of depression, anxiety, or post-traumatic stress as a result of these conditions in Afghanistan. 'At the same time, access to mental health care or psychosocial support remains out of reach to many, particularly in rural areas. Despite Mental Health and Psychosocial Support Services (MHPSS) being integrated into the national Basic Package of Health Services (BPHS) and Essential Package of Hospital Services (EPHS), nationwide only 320 hospital beds in the public and private sector are available for people suffering from mental health problems.'

58. This is not an appeal in which it can be said the appellant has proved his medical condition has reached a critical stage establishing a compelling humanitarian grounds for not removing him. The medical evidence provided shows that he has access to healthcare professionals in the UK.
59. It is not made out that even if he receives an adverse immigration decision adequate treatment and mitigation could not be put in place including during the process of removal or that sufficient of medication would not be provided to assist him during the initial period of readjustment within Afghanistan.
60. It is likely that if his mental health deteriorates on return and he may be required to access appropriate healthcare in addition to the family support and

accommodation that is available. Dr Sahota records the appellant had been prescribed sertraline in the past and at [51] is being prescribed mirtazapine which the appellant advised he had taken for a few years, which was last issued on 7 August 2023 according to the report.

61. It is relevant in relation to the weight that can be put upon Dr Sahota's report that it is specifically recorded at [24] that the report is based upon what he was told by the appellant which was taken at face value. Statements made by the appellant that he has no family or connections to Afghanistan and will effectively be alone are not true, as recorded above. The content of the medical evidence therefore has to be weighed against the prevailing facts as found and not as stated by the appellant.
62. The World Health Organisation supports healthcare in Afghanistan, but notes Afghanistan lacks essential services for specialised mental health care across the country with no specialised mental health services in the provincial hospitals and only four partially funded psychiatric units in the regional hospitals. As the appellant will return to Kabul it was not made out he would not be able to access one of these hospitals or to be able to obtain the medication he requires to enable him to function as he currently does with a degree of stability in his condition.
63. I do not find in relation to the appellant's general mental health that it is been established there is a real risk on account of the absence of appropriate treatment in Afghanistan or lack of access to such treatment of his being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy.
64. Mr Hussain's skeleton argument refers to the risk of suicide. I accept the submission that in Y and Z (Sri Lanka) v Secretary of State the Home Department [2009] EWCA Civ 362 the Court of Appeal expressly held that it was not necessary for an appellant's fear of persecution on return to be well founded in order for the risk of suicide or self-harm to engage Article 3.
65. The correct approach to be taken is that set out by the Court of Appeal in J [2005] EWCA Civ 629 to be read with Y and Z as follows:
 - i. The 'treatment' the Appellant would face meets the minimum assessment of severity, as it entails suicide;
 - ii. There is a causal link between the real risk of suicide and the act or threatened act of removal;
 - iii. An Article 3 claim can in principle succeed in a suicide case (Bensaid applied);
 - iv. Y is clear authority for the proposition that a subjective fear, even if not objectively well founded, can succeed under Article 3. The body of clinical opinion is that this fear is genuinely held by the Appellant, and that he is suffering from serious mental illness, and that return is likely to worsen his symptoms, significantly negatively impact his overall psychological health and increase the risk of suicide;
 - v. the country expert evidence shows that there is a lack of effective access to mental health care/psychological support on return for the Appellant which is likely to only exacerbate any subjective fear he has.
66. A more recent decision of the Upper Tribunal is AXB (Art 3 health: obligations: suicide) Jamaica [2019] UKUT 397 (IAC) the headnote which reads:
 1. *In a case where an individual asserts that his removal from the Returning State would violate his Article 3 ECHR rights because of the consequences to his health, the obligation on the authorities of a Returning State dealing with a health case is primarily one of examining the fears of an applicant as to what will occur following return and assessing the evidence. In order to fulfil its obligations, a Returning State must provide "appropriate procedures" to allow that examination and*

assessment to be carried out. In the UK, that is met in the first place by an examination of the case by the Secretary of State and then by an examination on appeal by the Tribunal and an assessment of the evidence before it.

2. *There is no free-standing procedural obligation on a Returning State to make enquiries of the Receiving State concerning treatment in that State or obtain assurances in that regard. Properly understood, what is referred to at [185] to [187] of the Grand Chamber's judgment in Paposhvili concerns the discharge of respective burdens of proof.*
 3. *The burden is on the individual appellant to establish that, if he is removed, there is a real risk of a breach of Article 3 ECHR to the standard and threshold which apply. If the appellant provides evidence which is capable of proving his case to the standard which applies, the Secretary of State will be precluded from removing the appellant unless she is able to provide evidence countering the appellant's evidence or dispelling doubts arising from that evidence. Depending on the particular circumstances of the case, such evidence might include general evidence, specific evidence from the Receiving State following enquiries made or assurances from the Receiving State concerning the treatment of the appellant following return.*
 4. *Where an individual asserts that he would be at real risk of committing suicide, following return to the Receiving State, the threshold for establishing Article 3 harm is the high threshold described in N v United Kingdom [2008] ECHR 453, unless the risk involves hostile actions of the Receiving State towards the individual: RA (Sri Lanka) v Secretary of State for the Home Department [2008] EWCA Civ 1210; Y and Z v Secretary of State for the Home Department [2009] EWCA Civ 362.*
67. In relation to what may occur on return to Afghanistan, it was not made out the appellant could not be met by family members who will provide him with the required accommodation and support as noted above. The appellant has the benefit of the diagnosis of his mental health needs in the reports to which I have been referred. The burden is upon the appellant to establish that either the required treatment does not exist or that he would not have access to it, but that is not made out on the evidence, even taking into account the very limited facilities available in Afghanistan. I do not find the appellant has provided sufficient evidence to prove his case to the required standard to establish a real risk of a breach of Article 3 ECHR having taken into account the high threshold and the evidence as a whole.
68. It is not made out that any risk faced by the appellant is objectively sustainable or that the appellant will face a hostile actions towards him. There is no credible evidence that on return the Taliban have any interest, adverse or otherwise, in the appellant. It is a preserved finding that they will not.
69. In Y and Z the Court of Appeal set out the guidance provided in J in the following terms:
6. It may be helpful to set out at the start what J laid down. Dyson LJ, giving the judgment of the court, said in relation to the possibility that enforced return might bring about the appellant's suicide:
 25. It should be stated at the outset that the phrase "real risk" imposes a more stringent test than merely that the risk must be more than "not fanciful". The cases show that it is possible to amplify the test at least to the following extent.
 26. First, the test requires an assessment to be made of the severity of the treatment which it is said that the applicant would suffer if removed. This must attain a minimum level of severity. The court has said on a number of occasions that the assessment of its severity depends on all the circumstances of the case. But the ill-treatment must "necessarily be serious" such that it is "an affront to fundamental

humanitarian principles to remove an individual to a country where he is at risk of serious ill-treatment": see *Ullah* paras [38-39].

27. Secondly, a causal link must be shown to exist between the act or threatened act of removal or expulsion and the inhuman treatment relied on as violating the applicant's article 3 rights. Thus in *Soering* at para [91], the court said:

"In so far as any liability under the Convention is or may be incurred, it is liability incurred by the extraditing Contracting State by reason of its having taken action which *has as a direct consequence the exposure of an individual to proscribed ill-treatment.*"(emphasis added).

See also para [108] of *Vilvarajah* where the court said that the examination of the article 3 issue "must focus on the foreseeable consequences of the removal of the applicants to Sri Lanka..."

28. Thirdly, in the context of a foreign case, the article 3 threshold is particularly high simply because it is a foreign case. And it is even higher where the alleged inhuman treatment is not the direct or indirect responsibility of the public authorities of the receiving state, but results from some naturally occurring illness, whether physical or mental. This is made clear in para [49] of *D* and para [40] of *Bensaid*.

29. Fourthly, an article 3 claim can in principle succeed in a suicide case (para [37] of *Bensaid*).

30. Fifthly, in deciding whether there is a real risk of a breach of article 3 in a suicide case, a question of importance is whether the applicant's fear of ill-treatment in the receiving state upon which the risk of suicide is said to be based is objectively well-founded. If the fear is not well-founded, that will tend to weigh against there being a real risk that the removal will be in breach of article 3.

31. Sixthly, a further question of considerable relevance is whether the removing and/or the receiving state has effective mechanisms to reduce the risk of suicide. If there are effective mechanisms, that too will weigh heavily against an applicant's claim that removal will violate his or her article 3 rights.

70. The appeal in Y and Z was allowed as it was found on the basis of the evidence, including medical evidence which was unshaken in cross-examination or submissions from the Secretary of State, that although psychiatric care was available in Sri Lanka those appellants were so traumatised by their experiences and subjectively terrified at the prospects of returning to the scene of their torment, that they will not be capable of seeking the treatment they need [61]. That risk based upon accepted traumatic events and accepted subjective risk which have not been made out in this appeal to the same extent. The claimed risk to the appellant is not objectively well founded.
71. It is not a case of comparing the care the appellant may receive in Afghanistan against that he receives in the UK.
72. As noted, it is not made out there is a real risk of the appellant facing poverty and destitution on the evidence and it was not made out his family would not be able to provide for him in Kabul or assist with his reintegration or in accessing medical assistance.
73. I do not find it made out that the appellant has established an entitlement to remain on the basis of Article 3 ECHR in relation to his medical needs generally or in relation to risk of suicide.
74. Mr Hussian also raised the issue of Article 8 ECHR.
75. The appellant is a foreign criminal as defined by section 117D(2) of the UK Borders Act 2007.
76. Section 117C sets out additional considerations in case involving foreign criminals, providing exceptions to the ability of the Secretary of State to deport foreign criminal from the UK.
77. Section 117C (4) states:
Exception 1 applies where -
- (a) C has been lawfully resident in the United Kingdom for most of C's life,
 - (b) C is socially and culturally integrated in the United Kingdom, and
 - (c) there will be very significant obstacles to C's integration into the country to which C is proposed to be deported.

78. I do not find the appellant has established an entitlement to rely Exception 1 especially as it has not been found that there are very significant obstacles to his integration for the reasons set out above and in the preserved findings.
79. Exception 2, section 117C (5) applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner and child will be unduly harsh.
80. This is not applicable as the appellant does not have a genuine subsisting relationship with either a qualifying partner or qualifying child.
81. It is therefore necessary to consider whether there are very compelling circumstances over and above the Exceptions.
82. The issues relied upon by Mr Hussain in relation to the balance sheet exercise, which he submits displaces the public interest are:
- i. length of time in the UK, the appellant having been in the UK 15 years since aged 14.
 - ii. The appellant's vulnerability and mental health documented mental health problems suffering from PTSD in Major Depressive Episode, that the appellant would be suicidal on return, requires long-term trauma therapy, with mental health been a relevant consideration under Article 8 ECHR.
 - iii. Having regard to all the matters in his protection claim.
 - iv. Compassionate circumstances that had been previously accepted as a refugee having arrived as a child, been accepted that his father was murdered, the appellant claiming he faces risk on return.
83. It is accepted the fact the appellant has been in the UK for 15 years, the finding of availability of family, ability to rehabilitate, lack of evidence of inability to access the required service to assist with mental health problems, the intermittent nature of his mental health difficulties, findings in relation to Article 3 above relating to suicide, mental health and medical issues, are relevant to assessing whether the public interest is outweighed. The preserved findings in relation to the appellant's protection claim and the fact that he is no longer entitled to be recognised as a refugee, even though he may have been in the past as an unaccompanied minor without evidence of their being adequate support available to him had he been returned to Afghanistan, have also been incorporated in the balancing exercise.
84. Whilst it is accepted that returning anybody to a country like Afghanistan who has been away for the time the appellant has, requiring readjustment, will be difficult, problematic, and at times harsh, it is not made out, even when considering the physical and moral integrity argument on the appellant's behalf, that the weight to be given to the public interest in his deportation arising as a result of such a criminality, is outweighed by the appellant's circumstances considered cumulatively. I do not find the appellant has established that there are very compelling circumstances over and above the Exceptions, even if those circumstances may at times be compelling, they do not meet the required high threshold.
85. Answering the remaining questions posed by Mr Hussain, would removal be contrary to Article 3 ECHR, the answer is no. Would removal be contrary to Article 8 ECHR, the answer is no as the Secretary of State's decision has been shown to be proportionate on the facts and there are no very compelling circumstances sufficient to outweigh the public interest.
86. On that basis I must dismiss the appeal.

Notice of Decision

87. Appeal dismissed.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

27 October 2023