



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

Appeal Number: AA/01398/2014

THE IMMIGRATION ACTS

Heard at Field House

On 10 November 2014 and 5 January 2015

**Decision & Reasons
Promulgated**

On 16 January 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**ZA (AFGHANISTAN)
(ANONYMITY DIRECTION MADE)**

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

Respondent

Representation:

For the Appellant: Ms A Afzal, Legal Representative, instructed by Legal Acumen Limited

For the Respondent: Mr P Armstrong (10 November 2014) and Ms A Everett (5 January 2015), Specialist Appeals Team

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Callow sitting at Taylor House on 26 June 2014) dismissing his appeal against the decision by the Secretary of State to refuse to recognise him as a refugee, or as being otherwise entitled to international or human rights protection. The First-tier Tribunal did not make an anonymity direction, but I consider that such a direction is

warranted for these proceedings in the Upper Tribunal as a central issue in the appeal is whether the appellant is a vulnerable adult.

2. The appellant is a national of Afghanistan, whose estimated date of birth is 1 January 1995. This estimate is uncontested. He is recorded as having applied for asylum on 7 January 2009. In his screening interview, he said he was aged either 13 or 14. He had been born in Kabul, and his last permanent address in his country of origin was the village of Zangora, in Laghman province. His normal occupation was “casual work in fields”. His family consisted of his mother and father, a brother and sister, two maternal uncles and one paternal uncle. He had left his country five or six months ago. His parents had paid US\$6,000 to get him to Athens. He had come to England on a boat, hidden in a box on a lorry. He had not used an agent to get on the lorry because he did not have any money left. His reason for coming to the UK was to claim asylum. He thought he could make a life for himself here. Life in Afghanistan was dangerous. He had received a letter threatening him for learning English. He felt that he would be endangered if he returned. Schools had been attacked and mined.

3. The appellant provided a witness statement on 3 February 2009, and he was interviewed about his asylum claim on 24 March 2009. On 7 July 2009 the then Secretary of State gave his/her reasons for refusing the appellant’s asylum claim. There were internal discrepancies in his account, and it also ran counter to the objective evidence about the behaviour of the Taliban (paragraph 41). Even if his claim was taken at its highest, he still would not qualify for the grant of asylum. He had not shown that any incidents he had suffered were not simply the random acts from some individuals but were a sustained pattern or campaign of persecution directed at him which was knowingly tolerated by the authorities, or that the authorities were unable or unwilling to offer him effective protection. Also, he had not established that there was not an area of Afghanistan to which he could return and live safely. He claimed that his family had relocated to Logar after the Taliban threats. He had lived there without having any more problems with the Taliban. As he was previously able to relocate in Afghanistan without problems, he could do so now. Consideration had been given to the case of **LQ (Age: immutable characteristic) Afghanistan [2008] UKAIT 0005** where the Tribunal held that an orphaned minor with no family and friends to turn to, who provided evidence that they would be at risk of severe harm because they were children, were a particular social group under the Geneva Convention. But his claim was distinguishable from that of **LQ**. His mother, father and siblings remained in Afghanistan in the village when he left. He had also been able to make contact with his parents since he had arrived in the UK to let them know that he had arrived safely. It was noted that in answer to question 66 in the asylum interview, he had said that his family had told him that the bad situation in his area had improved since he had gone, and there were some facilities there now.

4. The appellant appealed against the refusal decision, and his appeal was dismissed by Judge Cox on 18 September 2009. The appellant had discretionary leave to remain as an unaccompanied minor, and on 25 May 2012 he applied for further leave to remain. His social worker, Laura Poole, was asked to complete a “best interests consideration pro forma”, and to return it by 30 May 2012, which she did.
5. On the topic of level of education / skills or qualifications gained in the UK, she said that ZA had completed his statutory education, and had almost completed his exams/course work for year 11. He had done very well whilst at school and had made some great achievements. He had been interviewed and accepted on to a course of education at the [college] in Peterborough. It would start in September and it was a full-time course lasting two years.
6. On the topic of emotional and behavioural development, she said that ZA was a very well-adjusted young man. He was happy and settled in his life in England and there were no concerns regarding his emotional and behavioural development. Reports from school all said that he was well-behaved with good manners. He responded to the boundaries that were put in place for him. On the topic of family and social relationships, she said that ZA had maintained a positive relationship with his foster parents despite the fact that he no longer lived with them. On the topic of self-care skills, she said that ZA was an independent young man. He lived in semi-independent accommodation and succeeded in being able to budget his money on his food shopping and to prepare and cook his own meals. He had very good personal hygiene, and always took care in his presentation. On the topic of the child’s views, she said that he was very mature and took responsibility for himself. He was excited about starting college, but he was understandably anxious as to what his future might hold.
7. On 10 January 2014 the respondent gave her reasons for refusing to vary the appellant’s leave to remain in the United Kingdom, and for removing the appellant under Section 47 of the Immigration, Asylum and Nationality Act 2006.

The Hearing Before, the Decision of, the First-tier Tribunal

8. The appellant’s appeal came before Judge Callow sitting at Taylor House on 26 June 2014. The appellant was represented by Ms Afzal, and Mr Bose, Home Office Presenting Officer, appeared on behalf of the respondent. In his subsequent determination, the judge said that the appellant had in effect renewed his claim for asylum and humanitarian protection. The core details of his claim were the same as those summarised by Judge Cox when he heard the appeal in 2009, save in one respect. After his arrival in the UK the appellant was in contact with his mother by telephone, and regularly spoke to her. When he sought to speak to his father, his mother advised that he was not available. In the course of 2010 she informed the appellant that his father had been killed

and that his grandfather had passed away. On further enquiry, she reported that his father had been killed by the Taliban because he had sent the appellant to Europe. The appellant's mother had remarried and had been barred from having contact with the appellant.

9. In cross-examination, the appellant said he did not want the Home Office to look for his family in Afghanistan. He accepted they could not be found, and if they had been found he would have been informed by the Home Office or the Red Cross. As his mother had been barred from speaking with him on the telephone, he did not know where she was currently living.
10. The judge received evidence from Gulfranz Ijaz and Susan Norman of Peterborough Council about the appellant's medical condition. Notwithstanding the lack of diagnosis by a doctor, they believed that the appellant suffered from PTSD. This might explain in their view why he had appeared to be inconsistent in the answers at his asylum interview. Also, it was later discovered that the appellant had a hearing impairment in one of his ears, and he may not have heard and fully understood the questions that were asked of him.
11. At the age of 15 the appellant was assessed by an educational psychologist, and he achieved well below the average level on all subsets of the cognitive assessment. He came across as a charming, responsive young man who had difficulty expressing himself clearly in English and also had difficulty in his comprehension in English. The psychologist determined that the appellant's ability was restricted to that of a 6 year and 10 month old child, rather than a 15 year old child. He said that this would explain any lack of credibility issues.
12. The judge's findings of fact are set out in paragraph 27 onwards of his determination. He was satisfied to the lower standard of proof that the appellant's explanation for his asylum claim was credible. He was fortified in reaching that conclusion because IJ Cox accepted that his core account was not wholly inconsistent with the objective evidence produced at the hearing before him. The judge continued:

In this context it is noted the appellant attended the asylum interview with a legal representative and a responsible adult and the main issue as to his credibility essentially focused on the appellant's conflicting evidence as to the contact that he had with his mother. Despite the fact the discrepancies remain unexplained, I do not consider them to be material on the consideration of the core elements of the appellant's claim for protection. The appellant has not told the truth about his mother. He has embellished the details of his contact and subsequent termination to bolster his claim that he cannot now be safely returned to Kabul. To the lower standard it has been established that the reason why the appellant left Afghanistan was that there existed a real threat of torture or death at the hands of [the] Taliban.

13. The judge went on to find that the appellant could safely relocate to Kabul, and that any potential interest the Taliban had could now be discounted

by the lapse of time. The judge went on to dismiss the appeal on all grounds raised.

The Application for Permission to Appeal

14. Ms Afzal settled an application for permission to appeal on behalf of the appellant. As summarised by Judge Frankish when granting permission to appeal, she asserted that insufficient credit was given for the appellant's mental capacity being limited to that of a person under the age of 7 as shown in a professional report; insufficient credit was given to the appellant's attachment to the foster family with whom he used to live; the judge had been wrong to accept part of the core claim but not all of it; the judge had been wrong to accept the core claim of the death of the father at the hands of the Taliban but not of the risk arising to the appellant therefrom; and the judge failed correctly to apply **KA (Afghanistan) [2012] EWCA Civ 1014** having regard to the appellant's mental handicap and the loss of contact with the family.

The Grant of Permission to Appeal

15. Judge Frankish granted permission to appeal for the following reasons:

The fact that the appellant has a mental age below 7 is found in the recitation of his case at paragraph 11. However, it features nowhere in the analysis which commences at paragraph 27 and, indeed, at paragraph 52, he is referred to as a 19 year old without any qualification of that age. That may amount to an arguable error of law.

The Error of Law Hearing in the Upper Tribunal on 10 November 2014

16. At the hearing, Ms Afzal developed the arguments raised in the grounds of appeal, and in particular the point identified by Judge Frankish as amounting to an arguable error of law. In reply, Mr Armstrong adopted the Rule 24 response, in which the respondent submitted that the grounds disclosed no material errors of law, and were merely expressing disagreement with the negative outcome of the appeal.

Reasons for Finding an Error of Law

17. It is not irrational, as suggested by Ms Afzal, for the judge to disbelieve the appellant on one aspect of his claim (loss of contact with his mother) while at the same time accepting another aspect of his claim (that he had a well-founded fear of the Taliban at the time that he was sent by his parents to Athens). But it was incumbent on the judge to explain why he rejected the appellant's evidence about the loss of contact with his mother, and no such reasoning is discernable. There is simply a bald statement by the judge that the appellant has not told the truth about his mother, but no explanation as to how he has arrived at this conclusion.
18. Mr Armstrong argues that the judge's error is not material as the appellant could safely relocate to live in Kabul on his own. The claim that he is

suffering from PTSD is at variance with his own evidence that he had no health issues, and in any event it has not been substantiated by any credible medical evidence.

19. However, at paragraph 26 of his determination the judge placed significant weight on the cognitive assessment of the appellant when aged 15 in assessing the credibility of the appellant's evidence. Unless there had been a dramatic improvement, there was by inference the possibility that the appellant's cognitive abilities were still those of a child so as to render the appellant a vulnerable adult. So the question of whether one or both parents were contactable was of acute relevance.
20. The judge did not make a clear finding as to whether the appellant's father had been killed by the Taliban; or as to whether his mother was contactable; or as to whether the appellant now had the cognitive abilities of a young adult (as suggested by the evidence of Laura Poole) such that he would be able to cope with life in Kabul on his own.
21. The lack of reasoning on the question of contact, and the failure to address the question of whether the appellant was to be treated as a vulnerable adult as a consequence of the cognitive assessment made of him when he was 15 years old, renders the finding on the international protection claim an unsafe one.
22. Although the finding in the appellant's favour on the issue of past persecution is supported by some reasoning, the finding is flawed because the judge has not engaged with the detail of the appellant's narrative and the discrepancies relied upon in the original refusal letter. Accordingly, none of the judge's findings of fact in relation to the international protection claim can be preserved.
23. I am not however persuaded there is any merit in the error of law challenge to the judge's disposal of the Article 8 claim. It is argued in the grounds of appeal that the judge erred in law by not considering the Article 8 rights of the appellant's foster family, and in particular the detrimental effect upon the grandchildren if the appellant was returned to Afghanistan. One of the grandchildren is autistic and has formed a great attachment to the appellant.
24. In her closing submissions before the First-tier Tribunal, Ms Afzal accepted that the appellant did not satisfy the Immigration Rules "addressing Article 8". She relied solely on the proposition that he had a private life deserving of protection under Article 8 ECHR outside the Rules. A prominent feature of that private life was his relationship with his foster parents and their family which continued notwithstanding the fact that the appellant was now living on his own as a young, independent adult: see paragraph 18(c) of the determination.
25. At paragraph 52 the judge held as follows:

The appellant, now 19 years old, has lawfully been in the UK for over five years. It has not been shown that it would be disproportionate to remove him. A failed asylum seeker has no expectation of a right to remain or to further private life ties. The character of the appellant's private life relied upon is ordinarily by its very nature of a type which can be formed elsewhere, albeit through different social ties after his removal from the UK. The appellant's private life claim advances a less cogent basis for outweighing the public interest in proper and effective immigration control.

26. The judge went on to observe that the appellant's life in the UK did not entitle him to remain by reference to a Convention which was directed to the protection of fundamental human rights, not the conferment of individual advantages or benefits.
27. I consider the judge has given adequate reasons for rejecting the appellant's private life claim outside the Rules, assuming that the appellant did not qualify for international protection (including humanitarian and Article 3 ECHR protection) as a result of being a vulnerable adult. The judge's finding is entirely in line with the relevant jurisprudence, including **MG (Serbia and Montenegro)**.

The Resumed Hearing in the Upper Tribunal on 5 January 2015

28. The appellant was called as a witness, and he mainly gave his evidence in English, although he was assisted from time to time by the Pashtu interpreter whom he clearly understood. He adopted as his evidence-in-chief his supplementary witness statement on the issue of contact. He first established contact with his family in Afghanistan in the course of 2010. Previously, the authorities had kept trying to call the number that was found in his pocket when he first arrived, but could not get through on this number. But eventually around 2010 the telephone did connect, and the Red Cross informed his foster father and/or Gulfraz. It was at that point that his foster father bought a phone card for him, and he had dialled the number that he was given by him. The phone connected, and he believed he spoke to his uncle. He did not know whether in fact he was his uncle, although he told him that he was. He did not recognise the man's voice, and he did not know whether he was from his mother's or father's side. His uncle then gave him a number to call his mum, which he immediately did with the help of his foster father.
29. When he telephoned his mother, he asked how everyone was, and he asked to speak to his father. He was told he was not there. At that point he sensed that something was not right, but he did not know what it was and he felt he had to accept his mother's answer. From then on he was in regular contact with his mother on a weekly basis. Whenever he would ask to speak to his father, his mother would say that his father was not here but was somewhere else such as in Logar or Jalalabad. After several

months or a year, his mother eventually told him around late 2010 that his father had been killed and that his grandfather had passed away. As he was very distressed by the news, he did not ask for any further details. His mother never gave the phone to his siblings, and so he never spoke with them. When he asked her why they had sent him away, she said it was for his own safety. They had no choice but to save him from the Taliban. His mother once told him that ten people where they lived had been killed. He was quite alarmed by this news. Later he asked his mother about how his father died. She said that somebody had found out that he had sent his son to Europe, and the Taliban had killed him. Shortly after that, his mother told him that she could no longer speak with him because she had remarried and that people would know who he was, and would not let him speak to her. Although he kept trying to call her every week thereafter, he never got an answer.

30. In cross-examination, he said that he had last spoken to his mother at the end of 2011 or the beginning of 2012. He had last spoken with his uncle in 2010. He was asked whether he had tried ringing his uncle when he could not get a response from his mother. He said he did not have a separate number for his uncle. He had the same telephone number for his uncle as he did for his mother. He had started living on his own in 2011. He was still in contact with his mother when he had started living on his own, but not for a long time. At New Year (at the beginning of 2012) he had told his foster family that he had lost contact with his mother. When speaking to his mother, he did not know whether she was in Laghman Province or in Kabul.
31. His family had paid 6,000 US dollars to an agent to secure his passage to Greece. After Greece, he did not have the help of an agent. He had made friends, and he had travelled from Greece to the UK independently.
32. Susan Norman was called as a witness. She works for Peterborough City Council in the Leaving Care Services Department. She is the appellant's current personal advisor. In her witness statement before the First-tier Tribunal, she said the appellant had been known to Children's Services since November 2008. He was placed in foster care until August 2011. He attended [school], and there were concerns that he had a learning disability. When considering the appellant's case, Judge Cox had said that the vagueness and inconsistency in his evidence led him to conclude that he was not telling the truth. She strongly believed this could have been the result of his low cognitive ability, rather than any intended deception. The appellant had worked extremely hard at school. He had left school with passes in Science, Sports Studies, Food Science, IT and English. In August 2011 the appellant moved into semi-independent accommodation. He improved his independent living skills on a daily basis, and in February 2013 the appellant secured his own tenancy. He was currently at [college] studying on an ESOL course. He was making good progress, and his latest college report stated that he was a social, charming and hard-working young man. She had been working with the appellant since June 2012. In her opinion, since arriving in the country he had progressed and

developed well. While he continued to show excellent improvement in both his independent skills and academic ability, she would not confidently say he was yet operating at a level consistent with his chronological age.

33. In her supplementary witness statement dated 23 December 2014, Ms Norman said the appellant would have a six month pathway plan where he would talk openly about his contact with his mother and his feelings at the time. In the early days when they discussed the possible outcome of his asylum claim, and what would happen if he was refused, the appellant would say that it was OK if he had to return home, because he would get to see his mother. But in the last few pathway plans that she had done with the appellant, he had been talking about not having contact with his mother and how that made him feel very sad. It was important to note that in all the years she had known the appellant since 2008 (she was assigned to him as his personal advisor when he turned 18 in 2013) he had never lied to her. She had always found him to be honest and trustworthy. She had no reason to disbelieve him when he said that he was not in contact with his mother, and that he did not know the whereabouts of his remaining biological family.
34. In cross-examination, Ms Norman said she could not recall when the appellant had first said that he had lost contact with his mother. It would have been at one of the six monthly pathway sessions that they had together. It was definitely the case that he had not been in contact with his mother at the last two sessions, which were in March and September 2014 respectively. She could not say whether this was the case for the previous pathway session in September 2013. The explanation he had given for losing contact was his mother was that his mother had remarried, and so she was no longer able to have contact with him. The appellant was aware of the Red Cross, and she believed that she would have discussed with him the possibility of trying to find other members of his family after he had lost contact with his mother. She could not contact the Red Cross on his behalf, and she felt that he had given up. She had come on board when the appellant had turned 18, and it was around that time that he had lost contact with his mother.
35. Ms Norman was asked to comment on Dr Young's assessment of the appellant's daily living skills at paragraphs 19 and 20 of her report. His overall score in daily living skills was in the moderate low range, which meant that he had performed better than 13% of other young people his age. At paragraph 21, Dr Young said that his daily living skills were largely appropriate for his age. His scores in the domestic and community living skill areas were quite age appropriate, suggesting that he demonstrated a range of skills suitable to assist his functioning at home and out and about. On the whole, his low score for the personal living skills brought his overall score down.
36. Ms Norman said that the appellant managed at home, but it was like going into a boy's bedroom. If it were not for his foster family, she wondered

how often he would put his clothes in the washing machine and how healthy his eating habits would be.

37. She was asked whether it surprised her that the appellant had been able to cope with travelling on his own from Greece to the UK. She answered she was amazed how any child of the appellant's age was able to get here.
38. Mr K S was called as a witness. In his witness statement dated 23 December 2014 he said he was the appellant's foster father, and he continued to support him as he would do his own son. The appellant had come to them at the age of 13, around November 2008. He had made contact with his mother about six months after joining them. He had made contact via the Red Cross in Peterborough. The Red Cross investigated the telephone numbers that they had, and he believed that Gulfraz, who was his social worker at the time, was involved with assisting the appellant in making contact with his family. The appellant initially spoke to an uncle, and was then given a number to call his mother. He believed the appellant was in contact with his mother for approximately two years or just over that time. His last contact with his mother was a little before he left their care in August 2011. He recalled that he was visibly upset when his mother told him that his father had died; and on another occasion when she had told him that this was the last time she would speak with him. This was probably around the early part of 2011.
39. In answer to supplementary questions, Mr S said the appellant was talking in Pashtu to his family, and so he (Mr S) did not know at any given time to which family member he was speaking. But he understood from the appellant that he had spoken to his uncle once or twice at the beginning, and thereafter he had only spoken to his mother. He was asked whether the appellant had tried to call his uncle's number after he had failed to get through to his mother's number. He answered that he did not know.
40. Dr Claire Young was called as an expert witness, and she adopted her psychometric assessment report dated 5 November 2014. She had conducted an assessment appointment with the appellant lasting two hours on 21 October 2014 for the purposes of completing a cognitive assessment. She had also drawn upon a clinical interview with Mr S which had been conducted by a colleague in order to complete the Vineland adaptive behaviour scale; she had had several consultation meetings with Susan Norman to assist in gaining information regarding the appellant's current care plan; and she had taken into account a letter dated 23 October 2014 from Mr K H, assistant principal at [the school], where the appellant had studied from 12 January 2009 until 2012 (after which he had moved to [college] to follow a mechanics course).
41. Mr H reported that when the appellant joined school in year 8, he had almost no English skills. As his language developed, it became more evident that his cognitive abilities appeared to be considerably delayed. He gradually developed his ability to speak simple English and establish good relationships with members of staff and his peers. However, it was

always evident that his ability to learn was very limited, and that this was more than just the fact that he was trying to acquire a second language. His ability to understand concepts and retain information appeared to be very limited.

42. The results of the cognitive assessment tests which she had carried out at the assessment appointment on 31 October 2014 were that the appellant achieved a verbal IQ score of 60, which fell in the extremely low range. In comparison, his performance IQ score was 84, which fell within the low average range. His VIQ score would be considered to be within the range of a learning disability. On reviewing his responses, the appellant performed significantly better on the non-verbal sub-test.
43. The Vineland adaptive behaviour scale assessed an individual's adaptive behaviour in the four broad domains of communication, daily living skills, socialisation and motor skills. There was also a maladaptive behaviour index that provided a measure of problematic behaviours that might interfere with an individual's adaptive behaviours.
44. The appellant scored in the low range for communication. It was clear from the assessment the appellant had severe difficulties with communication. It was acknowledged that his language difficulties would invariably impact on his overall communication score. But it would be expected that his level of English would be higher than the scores obtained from the assessment, on the basis that he had had six years of daily exposure to English, and that he had attended an English school and lived with an English family for a period of three years. So it should not automatically be concluded that the appellant's low scores for this domain could be solely attributed to language difficulties.
45. For socialisation, the appellant scored within the moderately low range. This meant that he performed better than 12% of other young people his age. The motor skills section of the test was not administered, and the appellant's score on the maladaptive behaviour index was in the average range, which indicated that he did not demonstrate any maladaptive behaviours.
46. In her conclusions, Dr Young said the results of the cognitive assessments indicated the appellant had significant difficulties with his verbal skills, both receptive and expressive language. The impact of such clear deficits in the use of and understanding of language (and this was not specific to English or Pashtu and ZA showed difficulties with both) could not be underestimated, as the ability to understand language was a central element in promoting learning. The report from school highlighted their concerns around ZA's ability to learn and retain complex concepts throughout his schooling career, suggesting that there was little improvement over time.
47. In contrast to his verbal skills, the appellant showed strengths in the areas of non-verbal skills. Since starting his car mechanics course, the appellant

said he was able to follow instructions from pictures and observe others and this was a more effective way for him to learn. The VABT indicated that the appellant's daily living skills and socialisation was adequate which again illustrated strengths in his ability to manage himself on a day to day basis: organising his day, cooking/cleaning and managing his money. Notwithstanding his higher ability in this area, it appeared largely promoted and maintained by ongoing contact with his carers. It would therefore be possible that, without such support, the appellant would struggle to manage independently.

48. In cross-examination, Dr Young was asked whether she was surprised that the appellant had been able to travel from Greece to the UK independently as a 13 year old child. She answered she would be surprised if any 13 year old child had been able to do this. She agreed with Ms Everett that the appellant could work for a living if given the right job and the right support. He had very clear difficulties with his memory. His working memory was quite poor. But this had not been explored in detail.
49. In answer to questions for clarification purposes from me, Dr Young confirmed that she had not seen the recent reports from the appellant's college about his progress. She was not surprised that the appellant was praised as being a strong verbal communicator. She was however surprised that his level of understanding was described as excellent, although she was not sure how challenging the course was.
50. In re-examination, she was asked whether the appellant would be able to fend for himself in Afghanistan. Dr Young said she did not believe that the appellant would be able to be completely independent. He would require support. On paper, he was living on his own in the UK. But since he had sought out his former foster parents and others for practical support, you could argue that he was not fully independent. The biggest barrier to his survival on return to Afghanistan would be his difficulties in communication. There were clear deficiencies in his verbal abilities.
51. In answer to further questions for clarification purposes from me, Dr Young said that she was talking about the appellant's verbal ability in English. Her report did not deal with his cognitive or verbal ability in Pashtu.
52. In answer to a further question from Ms Afzal, Dr Young said that a lack of social support was the biggest risk factor for young people.
53. In her closing submissions on behalf of the respondent, Ms Everett relied on the Reasons for Refusal Letter dated 10 January 2014. She submitted it was not clear when contact with his family in Afghanistan had stopped, but in any event it was not shown that there was no family left in Afghanistan with whom he could resume contact. It was submitted that the appellant's ability to travel on his own from Greece at a very young age was highly significant, as it showed he had the necessary skills, in particular social skills, to fend for himself on return to Afghanistan. The appellant did not

fall into a risk category as a vulnerable young adult on account of being assessed as having a low cognitive and verbal ability.

54. In reply, Ms Afzal relied on her skeleton argument before the First-tier Tribunal, and also the skeleton argument which she had tendered in support of the error of law challenge. She drew my attention to various passages in the evidence upon which she relied. These showed, she submitted, that the appellant had a genuine fear of the Taliban. The evidence also established, she submitted, that the appellant had a well-founded fear of persecution on return to Kabul and/or that it would be unduly harsh for the appellant to relocate to Kabul as he did not have any family there and he was a vulnerable young adult.

Relevant Legal Principles

The Geneva Convention

55. Article 1 of the 1951 Geneva Convention defines a refugee as someone who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable or owing to such fear is unwilling to avail himself of the protection of that country or who not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or owing to such fear is unwilling to return to it.

Asylum under the Immigration Rules

56. Under paragraph 334 of the Immigration Rules an asylum applicant will be granted asylum in the United Kingdom if the Secretary of State is satisfied inter alia that he is a refugee as defined by the Geneva Convention.

Grant of Humanitarian Protection under the Immigration Rules

57. Paragraph 339C of the Immigration Rules provides that a person be granted humanitarian protection in the United Kingdom if the Secretary of State is satisfied inter alia that he does not qualify as a refugee, but that substantial grounds have been shown for believing that the person concerned, if he is returned to the country of return, would face a real risk of suffering serious harm and is unable, or owing to such risk, unwilling to avail himself of the protection of that country.

The Burden and Standard of Proof

58. In international protection claims, the standard of proof is that of real risk or reasonable degree of likelihood. Evidence of matters occurring after the date of decision can be taken into account.

Past Persecution or Serious Harm

59. Under Paragraph 339K, the fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or serious harm, will be regarded as a serious indicator of the person's well-founded fear of persecution or serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

Duty to Substantiate Claim for International Protection

60. Paragraph 339L of the immigration rules provides that it is the duty of the person to substantiate his claim. Where aspects of his claim are not supported by documentary or other evidence, those aspects will not need confirmation when all of the following conditions are met:
- (i) The person has made a genuine effort to substantiate his claim;
 - (ii) All material factors at the person's disposal have been submitted, and a satisfactory explanation regarding any lack of other relevant material has been given;
 - (iii) The person's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the person's case;
 - (iv) The person has made his claim at the earliest possible time, unless the person can demonstrate good reasons for not doing so;
 - (v) The general credibility of the person is established.

Discussion and Findings

61. At his screening interview which took place on 19 January 2009, the appellant gave a very clear account of his journey to the United Kingdom. At his asylum interview which took place on 3 February 2009 he confirmed that his parents and siblings remained in Zangora, Laghman Province. He had rung them once en route to the United Kingdom, and they had said that the situation in their home area was a little better.
62. The appellant's appeal against the refusal of asylum came before Judge Cox sitting at Birmingham on 16 September 2009. The appellant adopted as his evidence-in-chief his witness statement prepared for the hearing, and because of his age he was not cross-examined. The appellant's evidence was that his family had not moved to Kabul because they had nowhere to live there. Also his mother's family were from Kabul and they were enemies of his father's family. He did not know the details because his father would never discuss them with him. His mother had left home when he was very small, and her brothers blamed his father for her disappearance.
63. In his subsequent determination, Judge Cox acknowledged that the appellant's age had to be borne in mind when assessing his credibility. At the age of 14, in a strange country in the unfamiliar and no doubt

somewhat daunting circumstances of a formal asylum interview conducted through an interpreter, some allowance had to be made for misunderstanding and confused responses, however careful the interviewer may have been. Having reviewed some of the background evidence, the judge held that it was not beyond possibility that there were still some extreme Taliban who maintained their objection to English and who might therefore seek to deter pupils and teachers from pursuing its study. On the other hand, it was notable that in none of the reports was the teaching of English cited by the Taliban as a reason for targeting schools, teachers or pupils; and insofar as there was targeting of pupils (as opposed to teachers), it was girls who appeared at risk, the Taliban not approving of education for females.

64. Having borne in mind the need to give some benefit of the doubt to a young teenage claimant such as the appellant, he ultimately found himself unpersuaded on the totality of the evidence, both subjective and background, that his account was reasonably likely to be true. The vagueness and inconsistencies in his account of his schooling and of surrounding events were at a level which in his judgment exceeded what might be allowed for simply by virtue of age and experience in a person who had genuinely experienced the events described; and any support from the objective materials was minimal.
65. The judge went on to consider whether the appellant was entitled to succeed on **LQ** grounds. He found he was not as he was not an orphan like LQ and the whereabouts of his parents were known. They lived about three hours' drive from Kabul. He noted the appellant was born in Kabul, but his mother's family still lived there. He was unable to accept the appellant's assertion in his recent witness statement to the effect that her family were enemies. He found this was a late embellishment to the appellant's claim designed to show why he could not relocate to Kabul. He said this because in his first witness statement at tab C of the respondent's bundle he had said at paragraph 17 that the reason for not moving to Kabul was because they had nowhere to live. There was no mention at that stage whatsoever of any conflict with his mother's family in the city, and it would have been highly pertinent to refer to that had it been so. There was also no mention whatsoever of this matter in the lengthy asylum interview. The appellant had been able to communicate with his parents from here, and in the event of his notional return now, he was satisfied that advance arrangements could be made for them to meet and collect him from Kabul.
66. The unappealed findings of Judge Cox necessarily form the starting point of my credibility assessment. Ms Afzal invited me to find that the decision was legally erroneous, but she did not identify any arguable error of law in what presents as a cogent and well-reasoned decision.
67. Before Judge Callow, Ms Afzal sought to undermine Judge Cox's findings by reliance on the educational psychologist's report dated 5 July 2010.

68. As Dr Bennett explained in his introduction, the reason that he became involved was that school staff reported that the appellant had not made the progress acquiring English that would be expected, especially considering he lived in an English speaking household. Dr Bennett quoted from a childcare review record of 9 September 2009 recording that the appellant now had regular contact with his family in Afghanistan. He contacted them approximately every two weeks. He had begun attending [a school], and his literary and numeracy skills are very low.
69. Dr Bennett quoted from a childcare review record of 1 March 2010 which recorded that there had been some issues in school which involved two young females bullying the appellant. His spoken English had vastly improved since the last meeting. He appeared to be more confident when speaking. He continued to have five hours of teaching support to help him settle in his new group and ETCIC had funded a further five hours of support provided by Mr Afzal from the Minority Ethnic New Arrivals Team. Following some difficulties at home, the appellant stated he was now happy and content with his foster placement and it appeared that all the issues had now been resolved. School staff reported that the appellant was making significant progress, but not as much as they had hoped. There seemed to be a problem with the appellant processing information. The appellant continued to have regular phone contact with his family, and they knew that he was safe and living in England.
70. Dr Bennett met with staff, who reported that the appellant appeared to be thriving with his foster family and regularly accessed news from Afghanistan through the internet and telephone conversations with his family.
71. Dr Bennett assessed the appellant's cognitive abilities using the Wechsler Intelligence Scale for children (WISC IV UK). The appellant achieved well below the average level on all of the sub-sets for the cognitive assessment. He came across as a charming responsive young man who had difficulty expressing himself clearly in English and also had difficulty in his comprehension of English. Dr Bennett said that this scores on the various sub-sets should be treated with caution due to his difficulties with the English expression and comprehension. The appellant was also assessed on selective sub-tests of British ability scales II and he achieved the age equivalent of 6 years and 10 months in spelling and reading.
72. Mr S reported to Dr Bennett that the appellant had left Afghanistan because the family did not want him to get involved in the Taliban. He had been with the foster family for nineteen months and appeared quite mature in his attitudes. He spent a lot of time on the computer and got news from Afghanistan. He was very independent. He could cook, wash and iron his clothes and generally look after himself. He ate Halal meat. The appellant was taken to a mosque but was reluctant to continue going there as was he concerned when they asked about his family in Afghanistan and where they lived.

73. In his summary, Dr Bennett repeated his warning to treat the results of the individual assessment with caution. In his list of recommendations, Dr Bennett said that the appellant might benefit from a first language assessment and if this could be carried out he would be interested to hear the results. He was also likely to benefit from opportunities to speak his first language (Pashtu) and keep in touch with his cultural heritage.
74. On a careful reading of Dr Bennett's report it is apparent that it does not retrospectively cast doubt on the determination of Judge Cox. The appellant presented his asylum case in his first language, Pashtu, and there was never any suggestion of any misunderstandings through this medium of communication. As stressed by Dr Bennett, his cognitive assessment was confined to the appellant's cognitive abilities in English, a language which he was struggling to master. Dr Bennett made it clear that he was not reaching any conclusions about the level of the appellant's cognitive or verbal abilities in his first language.
75. In her report, Dr Young says she spoke with the interpreter after the assessment to gain some qualitative feedback on the appellant's receptive and expressive language ability. The interpreter commented that the appellant appeared to understand the instructions adequately, but observed difficulties with the appellant expressing himself verbally - both in English and Pashtu. It was apparently this evidence from the interpreter which underpinned the conclusion at paragraph 28 of Dr Young's report that there were clear deficits in the appellant's use and understanding of Pashtu, as well as in his use and understanding of English. However, when I asked Dr Young to clarify her conclusions, she, like Dr Bennett before her, confined them to the appellant's cognitive and verbal abilities in the English language medium. I consider that she was right to do so, as the evidence of the interpreter is too vague and unspecific to reach a reliable conclusion about the appellant's cognitive and verbal abilities in his first language.
76. Laura Poole began working with the appellant in June 2011. She continued working with him until January 2013 when he turned 18, and his case was fully transferred to Susan Norman. In her witness statement of 19 June 2014, she said that throughout her time working with the appellant, she witnessed an improvement in his ability to communicate in English, both spoken and written. They went from needing to use an interpreter at all times to being able to have conversations in English. By the time that her involvement with the appellant ended, they no longer used an interpreter. She said that the appellant was currently living in his own flat and managing his tenancy well. He continued to utilise the support available to him to ensure that he was successful in this task. He was very good at asking for help when needed and is very appreciative of the support he receives.
77. It is clear from Dr Young's assessment that the appellant has "adequate" daily living skills for a person of his chronological age. A theme of both her oral evidence and that of Ms Norman is that the appellant is not truly

independent as he, for example, consults Ms Norman or Mr S about the payment of utility bills. But, as is tacitly acknowledged by Ms Poole, being very good at asking for help when it is needed is a strength, not a weakness.

78. On the issue of contact with family members in Afghanistan, there are significant inconsistencies in the evidence. Each of the three witnesses who gave evidence before me on this topic gave different accounts as to when the contact with the appellant's mother ended. Moreover, the appellant claimed only to have ever had one telephone number for his mother and uncle, whereas he had previously stated that he had separate telephone numbers for each of them. On the accounts given by the appellant and Mr S, Ms Poole would have been the appellant's supervising social worker in the period when his mother allegedly told him that she was not going to speak to him anymore because she had got remarried.
79. But in her witness statement of 19 June 2014 Ms Poole merely records that the appellant no longer has contact with his mother. She does not say why contact has ceased, nor does she refer to the alleged killing of the appellant's father. The fact that Ms Poole does not mention such matters is highly significant. She says that the appellant used to speak to her about his worries regarding his mother's safety and the safety of where she was living. During one phone call with his mother, she says that he learned that ten people had been killed in the village where she was. So it is not credible that the appellant would have shared such matters with Ms Poole, but not have shared with her (if it was true) the fact that his father had been killed, or the reason why contact with his mother has ceased.
80. Having considered all the evidence that is before me, including the considerable volume of additional evidence that was not before Judge Cox, I find that the appellant has not discharged the burden of proving that he is a reliable witness of truth with regard to the core of his claim. In short, there are not substantial grounds for believing that the appellant fled Afghanistan to escape persecution at the hands of the Taliban for attending a school which taught English. By the same token there are not substantial grounds for believing the appellant's father was killed by the Taliban for sending the appellant to Europe. I accept the appellant is no longer in contact with his mother, but it does not follow that either she or other family members in Afghanistan are not contactable. In his screening interview, he said he had two maternal uncles and one paternal uncle. His mother's family are based in Kabul, and so prima facie the appellant should be able to access a family support network in Kabul through one or both maternal uncles. But even if, contrary to my primary finding, there is no family support network available to the appellant in Kabul, I find that the appellant has the skills and resourcefulness to access social support networks in Kabul so as to be able to survive in Kabul and to lead an adequate private life in Kabul. Alternatively, since the appellant has not established a well-founded fear of persecution in his former home area in Laghman Province, he is sufficiently mature and resourceful to arrange for his independent travel from Kabul to his home village in Laghman

Province. There are not substantial grounds for believing that the appellant is a vulnerable young adult such that returning him to Kabul would engender a real risk of persecution or a real risk of the appellant suffering serious ill-treatment of such severity as to cross the threshold of Article 3 ECHR. Alternatively, insofar as the appellant needs to live in Kabul rather than in his home village of Laghman Province for reasons of safety, it is not shown to the required standard of proof that the appellant's relocation to Kabul is either unreasonable or unduly harsh.

Notice of Decision

The decision of the First-tier Tribunal dismissing the appellant's appeal on Article 8 grounds did not disclose an error of law, and the decision stands. The decision of the First-tier Tribunal on the appellant's claim for international protection did contain an error of law, and accordingly the decision is set aside and the following decision is substituted: the appellant's appeal against the decision to refuse to recognise him as a refugee, or as otherwise requiring humanitarian or human rights (Article 3) protection, is dismissed.

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

Date **16 January 2015**

Deputy Upper Tribunal Judge Monson