Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: RP/00104/2016**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 9 September 2019	**On 30 September 2019**

Before

UPPER TRIBUNAL JUDGE PITT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MS
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr N Bramble, Senior Home Office Presenting Officer
For the Respondent: Ms V Easty, Counsel, instructed by Duncan Lewis & Co Solicitors

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I continue the anonymity order made by the First-tier Tribunal. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

1. This decision is a remaking of the appeal of MS brought against the respondent's decisions of 4 and 10 August 2016 to revoke his refugee status and to refuse his Article 3 and Article 8 ECHR human rights claim.

2. For the purposes of this decision, I shall refer to the Secretary of State for the Home Department as the respondent and to MS as the appellant, reflecting their positions before the First-tier Tribunal.

3. The appellant is a citizen of Afghanistan, born on 1 January 1990. He came to the UK on 28 November 2008 and claimed asylum on 1 December 2008. His application was refused by the respondent in a decision dated 12 November 2009.

4. The basis of the appellant's asylum claim was that he was the son of a Hizb-e-Islami commander who was shot and killed by the Afghan military forces, and who refused to join the Taliban when they asked him to join them to avenge his father's death. The appellant maintained a fear of both the Taliban and the Afghan authorities. The respondent did not find the appellant's claim to be at risk from the Afghan authorities and the Taliban to be credible.

5. The appellant appealed to the First-tier Tribunal. The First-tier Tribunal also did not find the appellant's account of a threat from the Taliban or the Afghan authorities to be credible. However, it was accepted that his father had been killed in a violent incident which the appellant had witnessed. Further, the First-tier Tribunal found that as the appellant was a minor, he was a member of a particular social group and following the case of LQ (Age: Immutable Characteristic) Afghanistan [2008] UKAIT 0005, concluded that he was at risk on return on that basis.

6. Having been successful in his appeal, the appellant was granted leave to remain as a refugee on 17 February 2010, valid until 27 January 2015.

7. On 7 January 2015 the appellant applied for indefinite leave to remain (ILR). On 4 August 2016 the respondent refused that application, in addition revoking the appellant's refugee status and on 10 August 2016 refusing his human rights claim.

8. In the decision of 4 August 2016, revoking the appellant's refugee status, the respondent applied Article 1C(5) of the 1951 Convention and paragraph 339A of the Immigration Rules. The respondent found that there had been a significant and non-temporary change in the appellant's personal circumstances, specifically that he was by that time age over 18 and no longer a minor. It was not accepted that, as an adult, the appellant would be at any risk on return to Afghanistan.

9. In the decision refusing the appellant's human rights claim dated 10 August 2016, the respondent noted that the appellant had no family life in the UK for the purposes of Article 8 ECHR and, as regards his private life claim, concluded that he could not show that there were very significant obstacles to re-integration in Afghanistan or that there were exceptional circumstances that could justify a grant of leave on Article 8 ECHR grounds outside the Immigration Rules.

10. The appellant appealed against the decisions of 4 August 2016 and 10 August 2016. His appeal was initially heard by First-tier Tribunal Judge Majid who allowed the appeal in a decision dated 13 February 2017. That decision was set aside by the Upper Tribunal in a decision dated 20 March 2018.

11. The appeal was then remitted to the First-tier Tribunal to be heard *de novo*. It came before First-tier Tribunal Judge Frankish on 16 August 2018. Judge Frankish accepted only that the appellant's father had been killed in a violent incident which the appellant had witnessed. She also found that the appellant had been sent to the UK as an economic migrant rather than there being an ongoing risk from either the Taliban or the Afghan authorities. The appellant's protection claim was refused.

12. Judge Frankish went on to consider the appellant's Article 8 ECHR claim. She found that there were very significant obstacles to integration in Kabul owing to the fact that the appellant was uneducated and would find it difficult to find employment without family or tribal connections. The appeal was allowed under Article 8 ECHR.

13. The First-tier Tribunal also concluded that, in reality, the appellant would leave Kabul to join his family in Peshawar in Pakistan where he would be in difficulty as his marriage to another Afghan national had been conducted on the basis that his in-laws thought that he would obtain settled status in the UK. First-tier Tribunal Judge Frankish went on to allow the appeal on Article 8 ECHR grounds on the basis that there were very significant obstacles to the appellant's integration in Kabul.

14. The respondent challenged the decision of First-tier Tribunal Judge Frankish and that challenge came before Upper Tribunal Judge Kebede on 8 February 2019. The error of law in the reasoning of First-tier Tribunal Judge Frankish on the Article 8 ECHR claim was acknowledged on behalf of the appellant, in particular the reliance on the immaterial matter of whether the appellant would choose to relocate to Peshawar. There was also a concern that the judge had failed to consider evidence concerning the appellant's mental health which had been put before the First-tier Tribunal.

15. In a decision dated 12 February 2019 Upper Tribunal Judge Kebede set aside the decision of First-tier Tribunal Judge Frankish on Article 8 ECHR and reserved the remaking of that part of the appeal to the Upper Tribunal for a future hearing. The appeal was not remade immediately because of the concern about the evidence on the appellant's mental health.

16. Thus, the Article 8 ECHR appeal only was listed for hearing on 9 September 2019. There was a delay in listing the remaking of the appeal where the current country guidance case on Afghanistan, AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC) was being challenged in the Court of Appeal in what was then issued as AS (Afghanistan) v SSHD [2019] EWCA Civ 873. As set out in the direction dated 18 July 2019, the ratio of the decision in the Court of Appeal did not interfere with the findings of the Upper Tribunal's country guidance case of AS (Afghanistan) in a way that had a material impact on the assessment of the appellant's Article 8 ECHR claim.

17. As above, the remaking of the appeal was limited to a consideration of Article 8 ECHR and, specifically, whether the appellant's profile meant that he would face very significant obstacles to reintegration in Kabul, applying paragraph 276ADE(vi) of the Immigration Rules. The guidance in AS (Afghanistan) which remains extant following the decision of the Court of Appeal in AS (Afghanistan) v SSHD [2019] EWCA Civ 873 is relevant to that assessment:

"Internal relocation to Kabul

(ii) Having regard to the security and humanitarian situation in Kabul as well as the difficulties faced by the population living there (primarily the urban poor but also IDPs and other returnees, which are not dissimilar to the conditions faced throughout may other parts of Afghanistan); it will not, in general be unreasonable or unduly harsh for a single adult male in good health to relocate to Kabul even if he does not have any specific connections or support network in Kabul.

(iii) However, the particular circumstances of an individual applicant must be taken into account in the context of conditions in the place of relocation, including a person's age, nature and quality of support network/connections with Kabul/Afghanistan, their physical and mental health, and their language, education and vocational skills when determining whether a person falls within the general position set out above.

(iv) A person with a support network or specific connections in Kabul is likely to be in a more advantageous position on return, which may counter a particular vulnerability of an individual on return."

18. It is undisputed that MS does not have any connections or a support network in Kabul. He is from a different part of Afghanistan and has never lived in the capital. In addition, he maintains that his mental health issues mean that he would be vulnerable on return such that he would have very significant difficulty in reintegrating.

19. The appellant relied on a psychiatric report of Dr Foster dated 15 March 2019. There was no dispute concerning Dr Foster's status as a Psychiatric Consultant. Dr Foster was provided with medical records from the Belmont Health Centre for the dates 1 June 2018 to 3 August 2018. These showed that the appellant had reported experiencing flashbacks of his father's death, thoughts of self-harm, had been unable to work as a result and had been prescribed Zopiclone. He had later also reported low mood, headaches, difficulty in sleeping and further thoughts of self-harm and was also prescribed Mirtazapine. The GP notes went on to indicate that towards the end of June 2018 the GP diagnosed moderately severe depression and severe anxiety and referred the appellant for counselling. His suicidal thoughts, depressive symptoms and sleep difficulty continued through August 2018. Dr Foster concludes in paragraph 51 of his report that the notes available from the GP were "consistent with the diagnosis of PTSD and a depressive episode". Dr Foster goes on to state:

"The scales reported [by the GP] on 29 June indicate significant levels of anxiety and depression."

20. In his meeting with Dr Foster, the appellant described similar symptoms to those he had reported to the GP, in particular flashbacks of the traumatic experience of the death of his father, fatigue, lack of energy, hypervigilance, headaches, poor appetite, intermittent hopelessness with thoughts of his ending his life and poor concentration.

21. Dr Foster's summary was as follows:

"63. [SM] experienced a catastrophic and terrifying trauma whilst he was still a child, namely the murder of his father. He heard his father being shot and saw his mutilated dead body outside their home.

64. Following this he was taken from his home and kidnapped by the Taliban who indoctrinated and groomed him to become a suicide bomber.

65. He escaped from Afghanistan and endured a long and arduous journey over the to the UK lasting several months before arriving in the UK in a lorry.

66. He has now been living in the UK for some eleven years, all of his adult life. He has some friends and contacts in the UK and has been able to engage in some part-time work.

67. He has never seen his younger son and misses his wife, both his sons and his sister, telephoning them on a daily basis.

68. As a result of his traumatic experiences he has developed Post-Traumatic Stress Disorder and clinical depression. He has experienced suicidal thoughts and threats.

69. He requires specialist psychological and pharmacological treatment for his mental health difficulties.

70. He is concerned that if was forced to return to Afghanistan he would be killed by the authorities, the Taliban or Daesh.

71. His lack of status in the UK and the threat he experiences in relation to the thought of living back in Afghanistan have exacerbated his mental health difficulties."

22. SM also relied on a letter dated 15 March 2019 from the Belmont Medical Centre stating that he had first presented with symptoms of depression, anxiety and posttraumatic stress disorder in 2018. A review on 25 February 2019 and 15 March 2019 established that he was "still suffering with distressing symptoms of post-traumatic stress disorder" and a referral had been made to the mental health team.

23. The appellant also relied on a further letter from the Belmont Health Centre dated 14 August 2019. The GP reports the appellant presenting in 2018 with mental health problems and goes on to state:

> "Unfortunately, over this time his symptoms seem to have become worse. He presented to the practice on 25 February 2019 due to night terrors and panic attacks as well as feeling of life not being worth living. At this time his PHQ 9 score was 24/27 suggesting severe depression. At this time he was referred to the single point of access mental health team for urgent review. I can share this assessment with you if it is required and the patient gives permission. He has subsequently been seen weekly by a member of the mental health team to offer support.
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> Despite taking his medication and engaging in the services he continues to struggle with low mood. I feel that this is largely situational as his wife and children are living in Pakistan and he has no way of seeing them at present. He feels the only way he can

get better is to be reunited with his family. In the meantime we will continue to monitor in the practice."

24. The appellant also relied on a letter dated 15 August 2019 from Paiwand, an Afghan medical organisation. The counsellor from the organisation who had been seeing SM stated:

> "Our evaluation forms indicated that MS is showing signs of moderately severe depression and anxiety. MS has spoken about his poor and disturbed sleep, vivid nightmares, numbing, poor concentration and memory. He also shared that he was feeling low moods, negative and intrusive thoughts and suffers from frequent anxiety attacks, which has been much of the focus of our sessions and ways on managing this. MS has also shown signs of dissociation and depersonalisation which may be due to significant levels of anxiety and depression.
>
> I see MS as a vulnerable person who is currently struggling to function due to his deteriorating mental health. He is current prescribed antidepressants by his GP and we will be continuing with the counselling as I feel additional sessions are needed in order to support him through the difficult time that he is facing."

25. The appellant also relied on a report from Dr Giustozzi dated 25 March 2019. Dr Giustozzi is a well-known and respected expert witness on Afghanistan. Dr Giustozzi comments on the availability of mental healthcare in Afghanistan. In paragraph 7 he sets out that outside of the main cities "the provision of mental healthcare in Afghanistan is almost non-existent." He goes on to state:

> "7. … The country's only mental health hospital (Kabul) is in bad condition due to war damage and lack of maintenance. … In 2012 the Kabul Mental Health Hospital still has only 60 places, although the number of psychiatrists operating there has gone up six (from two in 2010). Plans to expand facilities with the building of new hospitals were never implemented. There is a problem of understaffing, as many of the already limited number of trained mental professional have left the country. … It should also be noted that to be admitted to this hospital in Kabul, it is necessary to be accompanied by a relative all the time. In early 2010 the National Health Strategy was revised to give more space to mental healthcare, the focus being on training health staff in mental healthcare awareness and informing psychosocial counsellors. However, the limited training imparted in mental healthcare is resulting in the abuse of psychotropic drugs, with an estimated 30% of the population taking such drugs and abusing them (see below) in 2010.
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> 8. If we consider that according to the World Health Organisation as of 2010 about 60% of Afghans suffer from various forms of mental health problems, it is obvious that the chances of having access to care for the average Afghan patient with mental health conditions are slim indeed. The opportunities for psychosocial support are almost non-existence in Afghanistan, mainly because of the extreme shortage of trained mental health professionals. Although the government had made mental health one of the priorities in the reconstruction of the health system in 2003, in practise little was done, even in terms of starting training programmes for mental health specialists."

26. In paragraphs 9 and 10 of his report Dr Giustozzi describes efforts by the European Union and a Greek NGO to support mental health provision, the European Union effort leading to a construction of a new building in the Kabul Hospital, albeit the bed number remained at 60. His opinion was that "Even in Kabul they are few and far between and attending them could seriously disrupt or render impossible, attending school or presence as the job place." The Greek NGO intervention concerned setting up training courses, translating training manuals and renovating facilities but "the impact has so far been limited".

27. In paragraph 13 Dr Giustozzi identifies that efforts to create psychosocial centres around the country had been relatively unsuccessful such that "even for this type of patient receiving consistent support is very difficult". Dr Giustozzi goes on to comment in paragraph 14 that even if MS was able to seek healthcare "It is unlikely that he would then receive more than cursory attention by the medical staff at the country's only mental health hospital." Dr Giustozzi states in paragraph 15 that the appellant would be unlikely to be able to compete for appropriate care and treatment given his inability to find work, appropriate accommodation and the absence of any family support. In paragraph 17 Dr Giustozzi identifies that there is stigmatisation of those with mental health problems and that this could lead to additional difficulties in finding accommodation and work. The appellant's medication of Mirtazapine is identified in paragraph 18 as being available in Afghanistan but at high cost for a proper prescription and:

> "More importantly only the Pakistani copies of these medicines were found in the pharmacies. These are often unreliable and manufactured without licence."

28. Dr Giustozzi's conclusion is set out in paragraph 19:

> "MS will therefore have very limited access to mental healthcare (compared to the UK) if he relocated to Afghanistan, including in Kabul. He will struggle to access mental healthcare there without family support: the system is simply not designed for taking care of lone, unhealthy individuals".

29. When assessing the evidence on the appellant's mental health problems and how this might affect him on return to Kabul, I bore in mind that the opinion of Dr Foster was based, in part, on the appellant's continuing submission that he was kidnapped by the Taliban and mistreated and has a future fear from them, the authorities and Daesh on return. This part of his claim has not been found to be credible and so is not objectively well-founded and, to an extent, reduces the force of the comments made by Dr Foster.

30. It remains undisputed, however, that the appellant has a diagnosed trauma from observing the violent assassination of his father when he was still a child. His GP and Dr Foster confirm that he has a severe depression, anxiety and post-traumatic stress disorder for which he is receiving pharmacological and psychological treatment.

31. It is my conclusion, having considered carefully the headnote of AS (Afghanistan) that this appellant without having access any kind of support in Kabul, the appellant is, as a result of the degree of his mental illness, particularly vulnerable. He is not a

single adult male in good health who can, in general, be expected to relocate to Kabul. In addition, he has been absent from Afghanistan for eleven years, albeit he is now an adult, has no family in the country at all, has had a limited education and has no vocational skills. It is my view conclusion that his particular profile is such that he would face very significant obstacles to reintegration in Kabul. He therefore meets the requirements of paragraph 276ADE.

32. Ms Easty identified at the hearing that in AS (Afghanistan) v SSHD [2019] EWCA Civ 873 the Court of Appeal noted in paragraph 82 that when reconsidering country guidance on Afghanistan, the Upper Tribunal would wish to take into account the new evidence contained in the UNHCR "Further Guidelines on Returns to Afghanistan" from 2018. In that report, UNHCR recommend that "given the current security, human rights and humanitarian situation in Kabul, an IFA/IRA is generally not available in the city." This put the risk for returnees to Kabul materially higher than earlier reports that had been considered by the Tribunal in AS (Afghanistan). In the context of the deterioration of conditions in Kabul identified by UNCHR, this appellant would obviously face even more significant obstacles to reintegration.

33. For these reasons, it is my conclusion that the appellant's Article 8 ECHR claim should be allowed.

Notice of Decision

34. The appeal is allowed on Article 8 ECHR grounds.

Signed: Date: 27 September 2019
Upper Tribunal Judge Pitt