



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13997/2018**

THE IMMIGRATION ACTS

Heard remotely at Field House

**Decision & Reasons
Promulgated**

On the 8 April 2021

On the 23 December 2021

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

F C

(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Danji, Counsel instructed by Biljani & Co Solicitors

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Interpreter: Mr Fahim Ahmad Hashemi - Dari and English Languages

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make this order because the appellant is an asylum seeker and publicity could create a risk to his safety.
2. This is an appeal against a decision of the respondent on 16 November 2018 refusing him international protection and/or leave to remain on human rights grounds. The appeal has previously been determined unsatisfactorily and a decision of the First-tier Tribunal set aside by Upper Tribunal Judge Kamara in the decision promulgated on 28 February 2020. Judge Kamara ordered that the appeal be redetermined in the Upper Tribunal and the case now came before me.

3. In her Decision and Reasons Upper Tribunal Judge Kamara summarised the case in the following way:

“5. The appellant’s asylum claim can be summarised as follows. He continued to rely upon his fear that the Afghan government would have him executed because he previously spied for the Taliban. The appellant’s fear concerned a commander called Ghulam Sakhi, whom the appellant reported to the Taliban, following which the commander was killed. The appellant also states that he fears that the Taliban will want him to rejoin them and claims to suffer from PTSD, depression and suicidal ideation. He was attacked, injured and hospitalised after he arrived in Afghanistan in 2020. He sold his property in Kabul for US\$10,000 to fund his return to the United Kingdom. His aunt has informed him that he is wanted by the local authorities because of his involvement with the Taliban.

6. In refusing the appellant’s claim, the Secretary of State had regard to the refusal letter of 24 July 2015 where it was noted that the appellant had not claimed that he worked for the Taliban in his first asylum claim. Extracts from a previous determination dated 30 August 2005 were reproduced, which, in summary, identified that the appellant had fabricated his asylum claim and in any event Commander Sakhi was killed in 2004, when the appellant was already in the United Kingdom. The respondent also set out extracts from a further determination promulgated on 18 July 2016 which rejected the appellant’s account of events which he said occurred after his removal to Afghanistan in 2010. Little weight was attached to the supporting documents said to have originated in Afghanistan nor the report of an expert, Tim Foxley MBE. As for the Article 3 mental health claim, the respondent found that the appellant’s proposed removal would not breach Article 3 on medical grounds.”

4. I consider now the report of Mr Tim Foxley MBE dated 12 September 2018.
5. Mr Foxley’s academic qualifications include a Masters degree that he obtained with distinction in 2013 in peace and conflict studies at Malmö University specialising in Afghanistan. He was made an MBE in recognition of analytical work on Afghanistan whilst working for the Ministry of Defence in the United Kingdom.
6. He said that he began researching and analysing the political and military situation in Afghanistan in 2001 and worked with the Ministry of Defence from 2001 to 2012. He was based in Kabul for several months in 2006 and 2011 and was briefed by senior political and military officials including the British Ambassador and the commander of ISAF, the International Security Assistance Force, which is a NATO-led military mission in Afghanistan established by the United Nations Security Council.
7. He began his report with a helpful and succinct background summary beginning with the undoubtedly correct and depressing observation that the:
- “military intervention of the Soviet Union in December 1979 heralded the beginning of a protracted period of internal conflict for Afghanistan.”
8. It is part of the appellant’s case that he had been perceived as someone who betrayed Ghulam Sakhi, who is described as a “warlord commander for the Northern Alliance”.
9. Mr Foxley explained that the term “commander” is not a rank and is often an assumed title and that “status, pride and honour all play a role here and can

allow exaggeration and mythology to creep in and confuse facts". He explained the word can be used to describe a major military warlord but could also be used to describe a village militia fighter in charge of four or five men at a checkpoint.

10. He did not know any high-profile leader who used the name "Ghulam Sakhi". He did find several people in background reports that used the name "Ghulam Sakhi" or something very close to it but he could not say definitively if there was any objective evidence confirming that a Ghulam Sakhi is or was a warlord commander for the Northern Alliance. In his concluding comments he observed that the lack of detail in the account makes it difficult to be confident. He found it "plausible that [the appellant] he might have been involved in spying and intelligence sharing" and that there would "plausibly [be] some local community memory" of the appellant in his home area and that if he returned to his home area he could be vulnerable in a variety of ways both from the Taliban and anti-Taliban groups particularly if he was associated with targeting a former Northern Alliance commander.
11. It is no fault of Mr Foxley's that this is the best he can do but it is of limited value. I do, however, note his comments that "returning [the appellant] to Kabul would expose him to the regular and indiscriminate terror attacks from the Taliban and Islamic State. Any mental health problems could be exacerbated as a result."
12. It was also Mr Foxley's view that the general problems of relocating in Kabul or any other large city in obtaining work and accommodation and protection would be exacerbated by the appellant's apparent lack of education and mental health difficulties. I do not need expert opinion evidence to reach this conclusion but it is reassuring to know any expert's view.
13. The hearing before me was conducted remotely. Mindful of the evidence that the appellant at least may be vulnerable, I asked Counsel if there were any particular steps that needed to be taken. Apparently there were not. He confirmed that he had explained to the appellant the importance of saying if he needed any kind of break. I reiterated this point at the start of the hearing, pointing out to the appellant that because he was not before me and visible only in a small window on the screen I might miss signs that he was finding the strain too much and although I would endeavour to keep an eye on him he must say if he needed a break. In the event, he gave evidence by adopting his witness statements and being cross-examined. Cross-examination took about 40 minutes and was measured and courteous. The interpreter was asked to and did translate a summary of the submissions of both representatives. I was alert to the possibility of the appellant having difficulties and I saw nothing to suggest that any such problems arose. He certainly did not suggest that they did.
14. The appellant made three statements in support of his claim. The first is paginated 1 - 6, and is dated 17 September 2018, the second is paginated P1 - P7 and is dated 24 June 2019. It is made in response to the Reasons for Refusal Letter. The is dated 16 February 2021 and is a short statement expanding his evidence about his mental health.

15. In his first witness statement the appellant confirmed that he grew up in Afghanistan as the only child of his parents. He became involved with the Taliban when he was aged 22. His family were poor and struggling financially and he thought that working for the Taliban was the only way for him to survive and to support his family.
16. He said he was a neighbour to someone he identified as Commander Ghulam Sakhi and that Ghulam Sakhi worked for one Abdul Rab Rasul Sayyaf, who was head of the Islamic Dawah Organisation of Afghanistan.
17. He explained how he was once kidnapped by the Taliban and tied up and left in a locked room. He was detained for three days and every morning, every afternoon and every evening he would be "beaten up to a pulp". He was not given food or water. He was thrown on his face to prevent him sleeping. He kept alive by drinking water off the floor. He said this continued until he agreed to show them Commander Sakhi's house. He was threatened that if he did not co-operate they would kill his parents. He showed them the house and the Taliban stole guns and money from there. They could not find Commander Sakhi, so they killed Commander Sakhi's father. The appellant claimed to have watched this incident. They were merciless.
18. The appellant was scared and "shell-shocked". He felt that he had saved his parents but that act had resulted in someone else's father being killed.
19. Ghulam Sakhi regarded the appellant as responsible for his father's murder. He was frightened of Ghulam Sakhi, believing that he would kill him if he found him and so he had to run.
20. He went to his uncle's home about one and a half kilometres away from his home and after hiding for two years he fled Afghanistan. He said (paragraph 11 of his statement) that "an old friend of mine contacted me and told me that the Taliban is still after my life" and he knew then that he had "to run away further".
21. With the help of an agent he left the house at approximately midnight. His uncle met him a few hours later and they fled to Iran where he lived for about twelve months. He then learned that Ghulam had been told of his whereabouts and he believed that Ghulam's supporters were planning to kill him and his uncle. This information came from a telephone call from "former friends from my village".
22. The appellant said that he no longer had friends in Afghanistan to watch out for him. He could no longer speak to them because it would put their lives at risk as well as the lives of their families. He was not surprised that Ghulam Sakhi had found that he was in Iran because he would go to any lengths to avenge his father's death.
23. The appellant then travelled to another safe country, travelling through many countries not known to the appellant over a period of a year before entering the United Kingdom in 2003 by lorry.
24. He explained that the Home Office initially had an incorrect date of birth for him. He said that was not the result of any dishonesty on his part but was a mistake by the police that he did not have the language skills to correct.

25. He said that he had been informed by his aunt by a telephone call that he was wanted by the local authorities.
26. It is a matter of record that the appellant was removed to Afghanistan for the second time on 24 August 2010.
27. The appellant said that he arrived in Afghanistan on 24 August 2010 and remained there for a period of ten days. Within four days of getting to Afghanistan he was attacked and suffered an injury to his right leg. Whilst in hospital he made arrangement to sell his only property in Kabul for \$10,000 that was paid in cash. He used the money to escape and he returned to the United Kingdom on a lorry.
28. He said how these events "haunt him" and he was suffering from anxiety, depression and post-traumatic stress disorder which presented itself with traumatic flashbacks, nightmares, long periods of depression and loneliness.
29. He struggled to recall memories of Afghanistan because he was so traumatised and he had been prescribed "numerous medications" to stabilise his mental health.
30. In 2013 he instructed a different solicitor who advised him he would require new evidence before making an asylum claim. He said that was why it took two years before he contacted the Home Office. He trusted his adviser and did not understand that delay would or at least may well be seen as a negative feature in his case.
31. He said that he had had many traumatic experiences. He had watched a man killed. He had been beaten "black and blue" on numerous occasions and he had been "on the run" for over fifteen years. He was constantly worried that he would be returned to Afghanistan killed brutally.
32. He said he had been in the United Kingdom and felt safer than anywhere else and he claimed that he was fluent in English although he did use an interpreter before me.
33. He feared that in the event of return to Afghanistan he would not be able to re-integrate and abide by Afghan traditions and cultural values such as wearing traditional clothing, not communicating with the opposite sex and not drinking alcohol in public or even buying alcohol to drink in private.
34. He believed he would stand out because of his clothes and his accent and he would be targeted as a consequence. It would be assumed that he was well-off and people would demand money from him. He believed too that he would be identified at the checkpoints as someone who had lived in the West because of his attitudes and manner and this would create problems again.
35. He believed that if he would be returned he would be imprisoned in a single room and tortured and then murdered.
36. It would be hard to find work after such time, especially as he had no connections in Kabul and the economy was collapsing. He no longer had any property in Kabul or anywhere else in Afghanistan and had nowhere to where he could return.

37. As indicated, his second statement is described as "Comments on Reasons for Refusal Letter".
38. There he explained that the government of Afghanistan is now run by the Mujahideen. The appellant had previously worked for the Taliban and so dare not seek assistance from the government, who saw the Taliban as enemies. He would also face persecution from the Taliban because of the way he had behaved. He said he could not seek help from the government.
39. He explained that he did not have family in Kabul. The Reasons for Refusal Letter referred to him having an aunt in Kabul but he said that was not right. His aunt lived in the village called Paghman. That is the same aunt whose house was under the control of the Taliban for about a year and they killed his aunt's brother too.
40. It was his case that he had been informed by his aunt that he was wanted by the local authorities. He said that was the last time he was in contact with his aunt and he was no longer in any kind of contact with her.
41. If he returned he would not be able to visit his aunt. If it was discovered that his aunt had helped him get away from the Taliban they would kill her or torture her in an effort to find him.
42. He said he were living in Kabul he would be detected by the Taliban and they would kill him. If the Taliban ever found out he had returned to Kabul, even if he had removed, they would visit his aunt and interrogate her and he would not expose her to that even if she had nothing to say.
43. At paragraph 32 of the Reasons for Refusal the Secretary of State complained that the appellant changed his evidence. According to paragraph 29 of the Decision and Reasons of First-tier Tribunal Judge Pears promulgated on 18 July 2016 the appellant said that he escaped from hospital after his friend paid the equivalent of US\$10,000 but at paragraph 22 of his witness statement he said that, whilst he was in hospital, he made arrangements to sell his only property in Kabul for US\$10,000. The appellant denied giving contradictory information about his escape from Afghanistan in 2010. He said he did sell his house, it was an informal sale arranged through a friend and he gave the appellant "US\$10,000 of the proceeds of sale to the hospital and gave me the rest of my money".
44. I accept that the allegedly inconsistent accounts could be two incomplete versions of the same story. It is undesirable to make adverse credibility findings on difference such as these without first asking for an explanation.
45. Dealing with his claim to have a broken ankle, he noted the hospital notes state that the injury was the result of "accidental trauma". He did not know why it was recorded as "accidental trauma". He assumed that the hospital staff were not particularly educated. In his asylum interview he had told the interpreter that his ankle had been fractured. It says at paragraph 7: "I don't know why the Home Office have said that I claimed my ankle was broken. I think this was miscommunication between myself and the interpreter."
46. As far as I am concerned, a fracture is any break in the continuity of a bony structure. No adverse inference should be drawn from the use of the synonyms

“fracture” and “brake”. It would have been helpful to the appellant if the cause of injury recorded by the hospital was the same as that relied upon by the appellant but hospital notes are prepared to assist diagnosis and treatment and I am not satisfied that the difference are significant.

47. The appellant said that he had spoken to the specialist doctor, Dr Agit Ambekar, who had described his leg injury as “consistent with a fractured ankle and that this is consistent with the assault”.
48. The appellant dealt with the inconsistencies recorded in his date of birth. The Home Office said his date of birth was 1 January 1977 and he said that was his correct date of birth. On an occasion when he was arrested someone wrote down that his date of birth was 1 January 1987 but that was never his case and never his intention to say he was born in 1987. He did not have a birth certificate.
49. At paragraph 38 the Secretary of State suggested that it would be possible for the appellant to internally relocate to Kabul. He said that if he went to Kabul he would have nowhere to live. He explained that Kabul, unlike London, is not a place where people mind their own business and people can easily find somewhere to live. He said that in Kabul nobody leaves their home after 4 o'clock and it is impossible to get accommodation without family links and he had no-one. A person just arriving would be spotted and people would gossip.
50. He said he had nowhere to live but even if found anywhere to live, which he regarded as “very unlikely”, he would be noticed by the Taliban caught by them. He had no idea how he could find anywhere to rest while he sought accommodation. He had no money to help him. He understood about Assisted Voluntary Returns but that money only lasted a while and he had nothing afterwards. He could not get work because he would be hiding all the time. He could not shop even for food for the same reason.
51. He said that even if he did have somewhere to stay in Kabul or find somewhere he would not get medical help for his mental health problems and he would be risking discovery every time he left the home and did anything. He could not trust anyone.
52. His mental health was deteriorating.
53. He said extended family members could not help him because he would expose them to a risk of trouble. They were poor and could not afford to support him or even to travel to Kabul to feed him.
54. He believed that the men in the family would be killed and tortured by the Taliban as had happened to his aunt's brother-in-law and he did not want to be the reason for his aunt's family being killed.
55. He said he could not manage in Kabul without money and he could not find work without drawing attention to himself. He said once a person worked for the Taliban that person had to continue working for them.
56. He repeated his claim that he would be identified quickly as a westernised person. He said he could not internally relocate in Afghanistan because the Taliban would find him. The Taliban never forgive someone who they think is

wrong and they “have eyes everywhere”. He had made his life in the United Kingdom and did not feel safe in Afghanistan.

57. His statement dated 16 February 2021 begins with the assertion that he did not wish to add to his previous statement but he re-asserted his claim that he would not have left Afghanistan if he had not had problems there. There was a time when his family had land and property and were well-off.
58. His mental health problems started after he arrived in the United Kingdom and worsened during his time in detention. He found it hard to concentrate and to remember things. Medication did not help him. He could not sleep. He found his life not worth living.
59. He said he used to socialise and had a lot of friends in Afghanistan but now preferred to be alone in the dark. He suffered from flashbacks, muddled memory and inability to recall certain things. Ordinary life events such as telephone calls or text messages made him nervous.
60. He claimed that he “always think about what would happen”. If he had been able to stay in Afghanistan he would have had a family of his own, a wife and children. He was now 44 years old and lived with a friend who supported him financially and his mental health was deteriorating. He did not believe anybody would marry him now and he would not be able to carry out the role as head of household.
61. He hoped his appeal would be allowed. He would not go back to Afghanistan. He had returned once and was attacked and badly injured. He would kill himself instead.
62. Before me the appellant was represented by Mr J Danji, Counsel instructed by Biljani & Co Solicitors and the respondent by Mr T Melvin, Senior Home Office Presenting Officer. The interpreter was Mr Fahim Ahmad Hashemi, who interpreted the Dari and English languages.
63. The appellant gave evidence and adopted the witness statements outlined above and was cross-examined.
64. He was asked first about family members still in Afghanistan. He insisted he had no-one remaining in Afghanistan. He confirmed that he had had a house in Kabul but was not in contact with his neighbours from that time. He said he found communication particularly difficult now that he was poorly and without contact.
65. He was reminded that two Tribunal Judges had found him an unreliable witness about his core claim including his not having family members in Afghanistan.
66. He said he had been in the United Kingdom for twenty years of his life and wanted to remain there.
67. He was then asked about his visits to a general medical practitioner. He said that since 2015 he had been detained in Colnbrook and that was when his health started to deteriorate. He had no medical evidence at the earlier hearing. He said he had papers from his time in Colnbrook referred to his condition in 2015. On release he went to a pharmacy to get help but he had no status or money and could not get any help.

68. He was pressed about why there were no records from a general medical practitioner. He said that could not register with a general medical practitioner. He had no documents such as an identity card or something that confirmed his address. Sometimes he would get friends to get medicines for him.
69. He said that he had panic disorders and his whole hands and body shook and was treated with tablets, now was treated by therapy. Some drops had been administered on a visit to hospital for emergency treatment. A general medical practitioner caused him to be contacted once or twice a week and advised him about his behaviour.
70. He was then asked particularly about Dr Lawrence, who wrote the medical report. He was asked about visiting Dr Lawrence and he said he took papers with him and that Dr Lawrence looked at what he had taken.
71. He said on his first visit to Dr Lawrence he took someone with him and that person was very helpful but he did not explain in a statement to the Tribunal how poorly the appellant seemed to be. He said on the second occasion somebody took him to see Dr Lawrence but remained in the car outside.
72. The appellant also had contact with something he described as a "church organisation" which I think is the Waterloo Multi-Ethnic Counselling Service which existed to provide support to people such as the appellant.
73. Mr Melvin put it to the appellant that he was "discharged" on 14 October 2020. There was some truth in that but he said it was not because his health condition was cured. He had finished a course of treatment. He understood Dr Lawrence said his condition deteriorated after that. He did not see that to be difficult. He was truthful with Dr Lawrence.
74. He was asked about being encountered working at a restaurant in 2015. He denied working. He said he was found in a back room.
75. He said he was removed in 2010 and he came back to the United Kingdom. He said he could not get a job in a restaurant in Kabul. He would be in great danger in Kabul.
76. He had produced documents from the police in Afghanistan tending to indicate he was in trouble. A friend had produced them but the friend was not giving evidence and he did not explain how the friend was able to produce them, simply that he had.
77. He was not re-examined.
78. I consider now the medical evidence of Dr Lawrence.
79. Dr Lawrence had provided two reports. The first is dated 11 October 2018 following an examination on 7 April 2018 and the second is dated 26 November 2020 following an examination on 25 November 2020. Dr Lawrence is plainly competent to provide expert evidence. In addition to the basic medical qualifications he has postgraduate qualifications as a physician and is a Member of the Royal College of Psychiatrists. He has an academic profile as a researcher and a particular interest in post-traumatic stress disorder.
80. The reports include appropriate directions about his role as an expert. He plainly understands what is required of him.

81. The examination in April 2018 revealed the appellant to be of very low mood. He was supported by a friend who attended the examination and reported on his concerns about the appellant's behaviour.
82. Dr Lawrence had medical notes from the Heathrow Immigration Removal Centre.
83. The appellant presented with a dishevelled appearance. He was not keeping himself clean and was wearing dirty sandals.
84. He summarised his experiences in Afghanistan as: "I was working with Taliban people and in front of the war I was attacked and stabbed in the back of my head". He reported that he had seen many dead bodies and that distressed him. He said how the Taliban had killed his parents in front of him when he was aged about 17 and forced him to work for the Taliban. He lived with his mother's sister and her husband but said he had had no contact with her husband and believed that his aunt had died two years before the examination.
85. He was taking tablets for depression. He insisted he had no siblings and he had no family because "everyone is dead".
86. Dr Lawrence's conclusions were emphatic. He said (page 39 in the bundle):

"There is no doubt that this man is suffering from severe depression, anxiety and post-traumatic stress disorder. It is certain that his post-traumatic stress disorder is secondary to his experiences in Afghanistan and that these symptoms have been made worse by his period of detention in the UK."
87. He supported this opinion with the observation that the range of symptoms exhibited were "extremely hard to simulate". Dr Lawrence then explained why he thought that it was "highly unlikely" that the appellant was feigning his symptoms.
88. Dr Lawrence opined that returning the appellant to Afghanistan would "restimulate the trauma of his constant fears in his childhood". He said it was difficult to predict the likelihood of anyone committing suicide but the appellant's PTSD and his depression severally and together increased the chance of suicide by a factor of about 12 against the population as a whole.
89. In answer to points raised specifically by his representatives Dr Lawrence said (page 41):

"This man is suffering from post-traumatic stress disorder with secondary depression".
90. He said the only offered causes were his experience of violence and murder of close members of his family and living in his home controlled by the Taliban ruling by fear and Dr Lawrence regarded these things as "very strongly the probable cause" of childhood and early adulthood experiences that led to trauma and depression.
91. Dr Lawrence praised the role of a supporting friend who he named.
92. He considered the prognosis to be "poor".
93. The supplementary report noted how the appellant had attended a course of counselling with the Waterloo Multi-Ethnic Counselling Service.

94. Dr Lawrence was shown photographs of the appellant apparently sleeping in a park in poor circumstances.
95. The appellant said that when he saw the photographs he was shocked at the conditions in which he was sleeping. He did not realise that at the time. He said that he would kill himself if he had the chance and that it was better to die in the United Kingdom than be a victim of the Taliban.
96. Dr Lawrence said that the symptoms of PTSD are “significantly worse than when I assessed him in 2018”. He continued that “this man is very seriously ill. His prognosis is poor.”
97. He considered that commonly available drugs were likely to assist but therapy would be ineffective while there was still a fear of being returned.
98. There is also a medical report from Mr Agit Ambekar dated 29 January 2019 following an examination on the previous day. Mr Ambekar holds a Masters degree in orthopaedic surgery and is a Fellow of the Royal College of Surgeons England. He has other relevant and impressive qualifications including attending Cardiff University Law School.
99. He said that he was instructed to examine the appellant and prepare a medico-legal report (in connection with the injuries sustained in the index incident in Afghanistan in 2010). The appellant said that whilst visiting Afghanistan he was assaulted on 28 August 2010 by individuals carrying rifles. He was struck on the right foot with the butt of a rifle and additionally sustained cuts on both forearms. Dr Ambekar concluded that “the injuries have been consistent with the alleged assault incident and on the balance of probability, sustained as a result of the same a few years ago.”
100. I recognise that there are higher categories of confirmation than “consistent with” but consistent with means what it says and I note Mr Ambekar’s conclusion that the alleged mechanism of the known injuries was the probable explanation.
101. Mr Melvin relied on the “extensive refusal letter” running to 26 pages dated 16 November 2018. He described the appellant’s immigration history as appalling. This is a sharp criticism but fairly made. Mr Melvin pointed out that the appellant had used a false identity and had been removed at least twice only to return.
102. It does not follow from that fact that the appellant behaved discredibly that he does not need protection although his behaviour might make it harder for him to prove his case.
103. I consider the letter now.
104. In summary, the Secretary of State found that the appellant was of no interest to the Afghan authorities, that he had failed to demonstrate that Ghulam Sakhi was an important or influential person, that his documents were unreliable and there were non-governmental organisations and extended family and medical facilities that could help him.
105. The letter pointed out that the appellant said that he arrived in the United Kingdom on 31 March 2003. Certainly he was arrested by the police that day and claimed asylum. The application was unsuccessful and an appeal

dismissed. His rights were exhausted in September 2005. He remained in the United Kingdom, applied for leave to remain in February 2008 but the application was withdrawn because he left the United Kingdom. In February 2009 he was encountered entering the United Kingdom clandestinely. He claimed asylum the second time in February 2009. The claim was treated as further submissions and refused. He was removed in March 2009. In August 2010 he was stopped riding a motor bicycle and gave false details and the details he gave were of a person disqualified from driving and he was arrested and his true identity discovered. He was removed to Afghanistan in 2010. In January 2015 he was encountered working in a restaurant and made a further application.

106. The basis of his claim was summarised as being of interest to the authorities as a result of the influence and power of Ghulam Sakhi and being destitute if he returned to Afghanistan and he had established a significant private life in the United Kingdom.
107. Importantly, his submissions that had not been considered previously are set out at paragraph 5 of the refusal letter. There, the Secretary of State said:

“Your asylum claim dated 26.01.2015 was on[e] based upon your fear that if you were returned to Afghanistan you would be ‘executed’ by the government because you worked as a spy for the Taliban, you reported to a Commander Ghulam Sakhi to the Taliban and they killed him therefore the Afghan government is after you. You also fear the Taliban on return to Afghanistan because they want you to join them again.”
108. In his first asylum claim the appellant had made no mention of working for the Taliban. It was not believed that he had anything to do with the Taliban and so it was not accepted that he was at risk from them in the event of return. That decision was appealed and the decision upheld by the First-tier Tribunal. The judge expressly rejected his claim to have received a letter from the Taliban during his brief stay in Afghanistan when he returned.
109. The Secretary of State considered Mr Tim Foxley’s report. The Secretary of State accepted that Mr Foxley was competent to give an expert opinion and found it likely that the appellant lived in an area controlled by the Taliban in 2000 to 2001. Mr Foxley found the appellant would not have an easy time in Kabul but could not produce any evidence to give substance to the appellant’s claim to be at risk because he was westernised.
110. The Secretary of State found nothing to link the appellant reliably with Ghulam Sakhi.
111. The Secretary of State considered particularly the appellant’s claim in his witness statement of 17 September 2018 that he was forced and threatened by the Taliban to show them around Commander Sakhi’s house with the threat that they would kill his parents if he did not co-operate. The problem with that is according to the appellant in his screening interview on 4 February 2015 his father had died in 1992 and his mother in 1995 and no threat was referred to in the application that led to a decision in October 2003.
112. The Secretary of State also noted an inconsistency between the claim in his witness statement that he had arranged to sell his only property in Kabul

and in evidence before the judge who heard an appeal that he escaped from hospital and a friend paid the equivalent of \$10,000. I have commented on this above but I accept that, whilst these stories might not strictly be inconsistent, they certainly do not read like a description of the same event.

113. The Secretary of State was not impressed with the supporting documents from Afghanistan. They had arrived rather late and were not well-explained.
114. The Secretary of State did not accept that the situation in Afghanistan was so turbulent or impoverished that the appellant could not return there safely unless he had a particular threat. The Secretary of State then noted the background evidence from a Country Information Policy Note dated January 2018 accepting that some people returned would be identified as “westernised” and this could lead to discrimination or social stigma but not persecution.
115. The Secretary of State then addressed the possibility of internal relocation, which she found was a realistic option. At that time the influence of the Taliban in Kabul was limited.
116. The Secretary of State found no reason for humanitarian protection or relied under Article 3 because the appellant was not at risk and there was nothing in his private life which amounted to a lawful reason to remain. The appellant did need medical treatment but he was not ill in a way that brought him within one of the very small group of people who had a human right to remain because of their ill health.
117. Mr Melvin’s written submissions comprise “Respondent’s Final Written Submissions” dated 29 January 2021 and “Respondent’s Submissions (Dr Lawrence Addendum Report)” dated 29 January 2021.
118. Dealing first with the “Final Written Submissions”, there it was Mr Melvin’s contention that there were healthcare facilities available in Kabul and there was no reason for the appellant to be afraid of ill-treatment by the state or a state-like body. Dealing with the “Dr Lawrence Addendum Report”, it was Mr Melvin’s contention that the report was unreliable. It did not seem to have been supported by recent medical notes and there was no indication that Dr Lawrence had seen the GP records that might have assisted him. There was no evidence such as evidence from friends to confirm his mental health problems and the appellant was an unreliable historian. With commendable clarity he said “the respondent submits the suicide issue is no more than a cynical, last-ditch attempt to force the UK government to grant leave to this undeserving gentleman.”
119. This is very different from the skeleton argument from the appellant. He submits there was a fear of the Afghan government, that is was supported by the context created in the opinion of Mr Foxley and the psychiatric report confirmed the appellant’s claim because it was credible.
120. Part C of the written submissions are particularly important. There, Mr Danji notes, sensibly, that the appellant starts with the disadvantage of having been disbelieved in two previous First-tier Tribunal hearings promulgated in August 2005 and July 2016 respectively.

121. The skeleton argument drew my attention to evidence that postdated those decisions which it was argued was sufficient to support a different conclusion. There is no argument about the principle here. I am not bound by a decision that is displaced by further evidence and particularly evidence that was not available on an earlier occasion.
122. I look at that evidence with particular care. Firstly, I go to Mr Foxley's expert report. Particular reliance was made on paragraphs 21 - 25 of that report.
123. Paragraph 21 deals with the term "commander". At paragraph 23 Mr Foxley explains that he cannot find with any certainty the commander named by the appellant. However, paragraph 24 does show objective evidence that the Paghman Province was under the control of the Taliban at the time the appellant said that he was there. There was also evidence of a security network of spies in Kabul. This is weak evidence that the appellant was known to and remains at risk from the Taliban.
124. The appellant's bundle also includes a police summons letter that purports to show that the appellant was of interest to the authorities. A Mr Yaghobi Mashooghollah provided a statement dated 10 September 2018 showing that he had gone back to Afghanistan on 22 November 2017 until 12 December 2017 and had brought back a police summons and a supporting letter, a proposal from the Islamic Republic of Afghanistan Ministry of Interior Affairs note and a hospital note. This is supporting evidence but is exceedingly thin. There is no indication how the material came to be available after so long. It is not something to which I can attach very much weight.
125. I look again at Dr Robin Lawrence's report. I cannot and do not dismiss this in the emphatic and confident way that Mr Melvin urges that I should. Dr Lawrence is a qualified psychiatrist. He has been a consultant at St Thomas' Hospital. I am quite confident that Dr Lawrence would have not reached the conclusions he did without reason and with respect to Mr Melvin, he has given me no good reason to doubt Dr Lawrence. It seems to me either that Dr Lawrence is incompetent or dishonest or right and of those three options I have to say that he is right. There is no doubt that the appellant has suffered something which has promoted post-traumatic stress disorder. Many things have happened in his life that have been disadvantageous and it is impossible to know what has caused them but something has. Further, he found that he had deteriorated. Neither can I dismiss his conclusion there would be "a very high risk of suicide if he were detained or if any attempt were made to remove him". I must give weight to that and find that is the situation.
126. I remind myself of the summary of the decision in **J v SSHD [2005] EWCA Civ 629** set out in the appellant's skeleton argument. The medical evidence that it is the act of removal which would trigger the suicidal act. It is not established that anybody is going to do the appellant deliberate harm and the truth is I know little about medical treatment available in the event of returning someone to Kabul now. I just do not know. It is a matter of public record that since this case was heard the regime has fallen but there is nothing in the papers before me or to my attention generally (I appreciate that this would not be evidenced before me) to give me any reason to think that the medical

situation has improved one jot. I do not accept there is any real prospect of the appellant being looked after in the event of return to Kabul.

127. Even if this is not a suicide case, I am satisfied that there is a sufficient case here to find significant obstacles to the appellant's re-establishment in life in Afghanistan. He has been away for a long time and is vulnerable and poorly.
128. I have appreciated fully Mr Melvin's observations about medical evidence at the relevant time. It is quite clear from the CPIN that healthcare is available in Kabul at that time and medication is available. This is of no use to the appellant if he cannot access it and there is nothing before me to indicate how access could take place. He is too poorly to take advantage.
129. In summary, I do not find that the appellant has been a persuasive or truthful witness. He has not established that he was at risk from the Taliban and so I do not accept has any risk to carry forward in the event of his return. I am not persuaded by unexplained late documents suggesting that he was of interest to the authorities. I just do not know enough about those documents to give them weight. The expert's report does not help the appellant very much. It might give some air of credibility to the story. Certainly, it does not show it to be wrong but this is not a case where it was suggested that the story could not be true.
130. The appellant has problems because of dishonesty in his dealings with the authorities in the United Kingdom and late disclosure of the important elements of this case.
131. The appellant bears the burden of proof albeit to the low "real risk" standard.
132. I am not persuaded that he is entitled to refugee or humanitarian protection. He has laid the foundations for a claim based on a fear of the Taliban who are now in charge but he has not been believed in earlier proceedings and the new material before me is not enough to displace those adverse findings.
133. However, it is, I find, fanciful to suggest that the appellant has friends or supporters in Kabul. The only reason to think that is that it would suit the respondent's case and he has been in the United Kingdom for a long time and returned very quickly from Afghanistan when he went there briefly.
134. I do not see how he can access the treatment that was available (I do not know if it still is). It follows that I, not without considerable hesitation, allow the appeal.
135. I make the observation that it is notorious that the regime in Afghanistan has changed since this appeal was heard. If my decision does not stand it seems to me inevitable that there will have to be a fresh application in which everything will start again, looking at present conditions.
136. For the reasons I have given I allow the appeal on human rights grounds. The appellant has satisfied me that there is a real risk that removing him would prompt him to take his own life and I am not satisfied that there are resources available to abate that risk.

Notice of Decision

137. The appeal is allowed solely with reference to article 3 of the European Convention on Human Rights.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 23 December 2021