



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000104
First-tier Tribunal No:
PA/53302/2022
IA/08044/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 24 September 2024

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

GAM
(Anonymity Order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Lams, instructed by Rodman Pearce Solicitors Ltd

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

Heard at Field House on 16 September 2024

DECISION AND REASONS

1. This is the re-making of the decision in the appellant's appeal, following the setting aside, in part, of the decision of First-tier Tribunal Judge O'Keeffe which had dismissed the appellant's appeal against the respondent's decision to refuse his asylum and human rights claim.

2. The appellant is a national of Afghanistan, born on 14 December 1973. He arrived in the UK on 29 January 2020 and claimed asylum on 10 February 2020. His claim was refused on 5 August 2022 and his appeal against that decision was dismissed on 1 November 2023 by First-tier Tribunal Judge O'Keeffe. The appellant appealed against that decision.

3. The appellant claimed that he was from Nangarhar province in Afghanistan and was married with five sons, three of whom had fled Afghanistan several years before him. He claimed that he had three half-brothers who had joined the Taliban and who had approached him and told him that they wanted him to drive suicide bombers to a particular place, since he worked as a bus driver. When he refused to do that they threatened him and his sons and on one occasion attacked him at his home and also subsequently attempted to abduct his two sons. He then fled the country with his two sons and was assisted by an agent to travel to Kabul and then to Iran and on to Bulgaria where he became separated from his sons. He travelled on to France and then came to the UK but had not been able to locate his sons. He feared being killed by the Taliban if he returned to Afghanistan.

4. The respondent, in refusing the appellant's claim, did not accept that he was from Afghanistan and did not accept his claim about his step-brothers being members of the Taliban and threatening him. The respondent did not accept that the appellant would be at risk in Afghanistan or that his removal from the UK would breach his human rights.

First-tier Tribunal

5. The appellant's appeal against that decision came before First-tier Tribunal Judge O'Keeffe on 18 October 2023. Judge O'Keeffe accepted that the appellant was an Afghan national, noting that DNA evidence confirmed him to be the father of three Afghan nationals who had been naturalised as British citizens. However she did not accept as credible his claim about being approached by the Taliban and being asked to drive suicide bombers, noting discrepancies and inconsistencies in his evidence. She considered that the appellant would not be at risk from the Taliban in Afghanistan and that he could return to his home area and she considered that he had not demonstrated that he feared persecution for a convention reason. The judge went on to consider humanitarian protection and Article 3. She referred to the Home Office Country and Information Note Afghanistan: Humanitarian Protection, published in April 2022, and considered the deterioration in the situation in Afghanistan since the decision in *AS (Safety of Kabul) Afghanistan CG [2020] UKUT 00130 (IAC)*. She noted that the evidence was that the appellant was just under 40, that he did not come from Kabul and had no connections there and that he was not an educated man. She also took account of the case put by two of the appellant's children in their own asylum claims that they came from a wealthy family. She noted that the appellant had had sufficient resources to pay for six people including himself to leave Afghanistan and she considered it highly likely that he had access to financial resources. She considered that even without a network in Kabul or in his home area, the appellant would be able to build a network quickly and successfully in Afghanistan, and she concluded that *"Taking into account the appellant's particular circumstances, the current background information indicates that the security and humanitarian situation in Afghanistan is not such as to expose the appellant to a real risk of serious harm on return to Afghanistan"*. The judge accordingly dismissed the appeal on all grounds.

6. The appellant sought permission to appeal against Judge O'Keeffe's decision on the grounds that the judge had erred when rejecting the claim for humanitarian protection by taking irrelevant matters into account and / or by failing to give adequate reasons when concluding that the appellant would not be at risk of inhuman and degrading treatment contrary to Article 3. It was asserted in the grounds that the judge had speculated that the appellant was highly likely to have access to financial resources, despite accepting that he was uneducated, had no connections to Kabul, had lost contact with his family and had been absent from Afghanistan for around 5 years, and

that the judge had made a mistake of fact about the appellant being just under 40, when he was just under 50 years of age. It was asserted further that the judge had failed to consider in any detail the evidence in the CPIN as to the humanitarian conditions specifically in Kabul or in the Appellant's home area of Nangarhar and failed to have regard to the overall evidence of the dire humanitarian situation in Afghanistan.

7. Permission was refused in the First-tier Tribunal but was granted upon a renewed application in the Upper Tribunal.

Upper Tribunal: Error of Law

8. The matter came before Upper Tribunal Judge Kopieczek and Deputy Upper Tribunal Judge Haria sitting as a panel, on 13 May 2024. Mr Lams represented the appellant before the Upper Tribunal. He referred to the fact that the respondent had not effected any removals to Afghanistan since August 2021.

9. The relevant part of the Upper Tribunal's decision is set out as follows:

30. We find that the Judge did make a factual mistake as to the appellant's age. Had the Judge found the appellant to be an adult when in fact he was a minor or found the appellant to be of working age when he was of retirement age, the error may have been significant. In this case we accept Mr Banham's submission and find that the error as to the appellant's age is not significant given the other findings as to the appellant's individual circumstances.

31. As to the finding that the appellant was "highly likely" to have access to financial resources upon return to Afghanistan this was based not solely on the claims made by two of the appellant's sons that they were from a wealthy family but also on the basis of the undisputed facts that the appellant had sufficient resources to pay for six people including himself to leave Afghanistan and the appellant had been earning an income in Afghanistan.

32. Reading the decision as a whole it is apparent that the Judge had the benefit of "a sea of evidence" (to adopt the terminology of Fage UK Ltd v Chobani UK Ltd [2014] EWCA Civ 5 at [114]). The Judge having undertaken a thorough examination of the facts gives cogent intelligible reasons for her unchallenged findings as to the credibility of the appellant's account and for the finding as to the resources available to the appellant on return to Afghanistan. For the reasons given we find this ground does not disclose any material error of law.

33. Turning to the second part of the grounds that the Judge erred in failing to appreciate that the political and security situation had significantly changed in Afghanistan since the decision in AS (Safety of Kabul) Afghanistan CG [2020] UKUT 00130 (IAC), Judge considers the appellant's claim to humanitarian protection on the basis of a breach of Article 3 owing to the current humanitarian situation in Afghanistan at [47-56]. Appeal Number: UI-2024-000104 6

34. The Judge notes at [48] that the Upper Tribunal decision in AS remains country guidance and sets out extracts of the guidance from AS. The Judge refers to paragraphs 2.4.4, 2.4.6, 2.4.12, 2.4.6 and 4 of the 2022 CPIN at [49 -53]. In relation to paragraph 4 of the 2022 CPIN the Judge states that "The overview at paragraph 4 refers to UNICEF information in November 2021, that the humanitarian situation continued to deteriorate with disruption in health and nutrition services, a disastrous food crisis and outbreak of preventable disease."

35. The respondent's refusal decision states that should the appellant be removed it would be to Kabul [262] and in assessing Article 3 risk we accept that the first point of the

assessment requires an assessment of the risk at the point of entry. It is unfortunate that the Judge fails to consider in any detail the situation in Kabul or indeed the appellant's home area of Nangarhar.

36. It is not an error of law to fail to follow factual findings in a Country Guidance case which did not exist at the time (SA (Sri Lanka) v SSHD [2014] EWCA Civ 683 at [12-[13])). The Court of Appeal gave guidance in SG (Iraq) v SSHD [2012] EWCA Civ 940, that very strong grounds supported by cogent evidence are required to justify a departure from a country guidance case. In this case, the Appeal Skeleton Argument before the Judge submits that there are very strong grounds supported by cogent evidence in the 2022 CPIN that there had been a clear and stark change in the political and security landscape in Afghanistan resulting in a dire humanitarian situation in Afghanistan to warrant a departure from the country guidance in AS.

37. The Judge in considering the humanitarian protection grounds of the appellant's case is clearly aware of the background information indicating a change in the security and humanitarian situation in Afghanistan as she refers to this at [56]. The Judge is selective in the extracts of the 2022 CPIN she refers to in the decision. The Judge finds on the basis of her rejection of the credibility of the appellant's account that the appellant would not be exposed to a real risk of serious harm [56]. Whilst there may be some overlap in risk factors demonstrating a risk of persecution and those demonstrating a humanitarian protection risk, it is not necessarily the case that the same factors are determinative of the risks. In short, just because the credibility of the appellant's account of being at risk on return due to a Refugee Convention reason was rejected it does not necessarily follow that there will not be a serious risk of harm on humanitarian protection grounds. Given the express submissions on the humanitarian crisis in Afghanistan affecting the general population in Afghanistan it was incumbent upon the Judge to address these submissions and give reasons for finding that the appellant would not be exposed to a real risk of serious harm on return. The Judge considers the 2002 CPIN and states as follows:

“49. I was referred to the respondent's Country Policy and Information Note Afghanistan: Humanitarian Protection published in April 2022. At paragraph 2.4.4., it is said that the political and security situation had changed significantly since the decision in AS and the number of people in need of humanitarian assistance was expected to increase to 24.4 million in 2022. Unemployment was predicted to rise to 29% in 2022 and there was little opportunity for casual employment.

50. At 2.4.6, it reports that 98% of the population had insufficient food consumption and acute levels of food insecurity affected approximately 18.8 million people with the figure expected to rise to 55% of the population in 2022.

51. The overview at paragraph 4 refers to UNICEF information in November 2021, that the humanitarian situation continued to deteriorate with disruption in health and nutrition services, a disastrous food crisis and outbreak of preventable diseases. Appeal Number: UI-2024-000104 7 52. At paragraph 2.5.2, it is reported that although the cost of living had increased since AS, evidence continued to indicate that in regard to the humanitarian situation in Kabul, the Upper Tribunal's findings at paragraph (iii) of the headnote set out above, continued to apply.

53. Paragraph 2.4.12 states that living conditions in other parts of the country vary and groups who may be vulnerable because of their status and circumstances, such as women, children, the elderly and disabled may face a higher risk of a breach of Article 3. It is necessary for me to consider whether the appellant, by reason of his individual circumstances would face a real risk of serious harm as a result of the humanitarian situation in Afghanistan.”

38. The Judge having rejected the appellant's account of being at risk from the Taliban took into account the appellant's particular circumstances at [54] but fails to give adequate reasons for finding that despite the evidence in the 2022 CPIN of the plight of the Afghan population being such that there is a humanitarian crisis, the appellant's particular circumstances are such that he would not face a real risk of serious harm on return to Afghanistan. The Judge does not state how the appellant's particular circumstances would protect the appellant from a risk of serious harm on return to

Afghanistan. In an otherwise clear and well written decision we find there is an absence of an assessment of relevant evidence and an absence of adequate reasons for the finding the appellant will not be exposed to a real risk of serious harm on return to Afghanistan.

39. We find that the decision involves the making of a material error of law. We set aside the Judge's decision preserving the findings at [11-46], in relation to the appellant's asylum claim."

10. The case was listed for a resumed hearing for the decision to be re-made on the basis that:

"The findings of fact required in order for the decision to be remade will focus on whether the appellant is eligible for humanitarian protection, as a consequence of a breach of Article 3, owing to the current humanitarian situation in Afghanistan."

Upper Tribunal: Resumed Hearing

11. The matter came before me on 16 September 2024. The appellant attended the hearing but did not give any further oral evidence. Mr Tufan produced and relied upon the Home Office Country Policy and Information Note Afghanistan: Humanitarian Protection, version 3.0 published in August 2024 and the Home Office Country Policy and Information Note Afghanistan: Fear of the Taliban, version 4.0 published in August 2024. Mr Lams produced and relied upon a Table of extracts from the April 2022 CPIN and the August 2024 CPIN. No further evidence was produced by the appellant.

12. It was agreed that the relevant provision to be considered in re-making the decision was Article 15(b) of the Qualification Directive, namely "serious harm" in the context of "torture or inhuman or degrading treatment or punishment of an applicant in the country of origin", which was equivalent to Article 3 of the ECHR.

13. Mr Lams made the preliminary point that the question of whether the respondent had resumed enforced returns to Afghanistan since August 2021 was a relevant issue and needed to be clarified. He relied upon the decision in SA (Removal destination, Iraq, Undertakings) Iraq [2022] UKUT 37 in that respect, in particular with respect to the absence of information as to the place of return in enforced removals. Mr Tufan was unable to provide any further details.

14. Both parties made submissions.

15. Mr Lams' submissions relied upon the deterioration of the situation in Afghanistan as portrayed in the statistics in the CPIN reports for April 2022 and August 2024, to which he referred in detail. He relied upon the references in the CPIN reports to the situation in Afghanistan being the world's worst humanitarian crisis, to the catastrophic reduction in the economy, the level of food and water insecurity, the limited access to health services and shelter and to the acute IDP crisis as a result of deportations from Pakistan and Iran. He noted that the respondent's case was that that did not necessarily justify a blanket grant of humanitarian protection, but he submitted that the appellant qualified for humanitarian protection on the basis of his particular circumstances. Those included the fact that he had not been in Afghanistan for several years since January 2020 or earlier, that he was over the age of 50 and was therefore in a category nearing the reduced life expectancy in Afghanistan and was considered old and that that carried implications as to employability, that he was uneducated and had worked in an unskilled job as a bus driver, and that he had no connections to Kabul to where it was assumed he would be returned. Mr Lams

submitted that there was no real obvious basis to suggest that the appellant would be immune from one of the most disastrous humanitarian crises.

16. Mr Tufan submitted that the respondent's current removal policy to Afghanistan was not a matter for the Tribunal as it concerned practical and procedural issues. The relevant issue was whether the high threshold to make out an Article 3 case was met. In that respect he relied upon the causal link and temporal proximity requirements in Article 3 living conditions cases, as addressed in OA (Somalia) Somalia CG [2022] UKUT 00033, and in particular paragraph 1 of the headnote and submitted that the threshold had not been met on the evidence before the Tribunal. Mr Tufan referred to the reports of huge amounts of returnees to Afghanistan including voluntary returns and the lack of evidence of risk on return in terms of reprisals from the Taliban against returnees. He relied upon the executive summary in the CPIN Afghanistan: Humanitarian Protection, August 2024 report which concluded, following an assessment of all the evidence, that in general the humanitarian situation was not so severe to reach the Article 3 threshold. As for the appellant's own circumstances, Mr Tufan submitted that there was no evidence to show that his three adult children in the UK could not provide for him financially in Afghanistan and further that the appellant was a man with no health issues. He confirmed that there was financial support available to the appellant from the facilitated returns scheme. Mr Tufan accepted that there were serious issues in regard to the humanitarian situation in Afghanistan but he submitted that there was not a sufficient basis to conclude that the appellant's rights under Article 3 and Article 15(b) would be breached by his return.

17. In response, Mr Lams submitted that it was unlikely that the appellant's home would still be remaining and that he had no accommodation in Kabul if he was returned there. As for the question of returnees from Pakistan and Iran, those were mostly enforced deportations. The influx of so many returnees would reduce the level of support available in the country. With regard to the question of support for the appellant from his sons, it was relevant that they had not been in contact with him prior to him coming to the UK and it was questionable that they would maintain contact with him on his return. There was also the question of how they would send money to him as the infrastructure did not exist by way of banks. It was unlikely that the appellant would find employment. Mr Lams maintained that the question of enforced removals was relevant and was not merely an administrative issue. It was relevant to the question of the lack of structures and systems in place in Afghanistan, and was also relevant to the question of the voluntary returns scheme and access to funds.

18. Mr Lams requested that directions be made for clarification to be given by the respondent on the question of enforced removals and that further submissions should then be made in that regard. Mr Tufan did not agree with such a course of action since it was the respondent's view that there was no Article 3 risk on return and the question of returns was a purely administrative matter which was not an issue for the Tribunal.

Analysis

19. I have not considered it necessary or appropriate to invite further submissions from the respondent in relation to the resumption, or not, of enforced removals to Afghanistan. The CPIN Afghanistan: Humanitarian Protection, August 2024 report makes it clear that the respondent's view is that there is, as a matter of general policy, no risk on return to Afghanistan, albeit acknowledging that a risk exists for certain categories of people. Accordingly any current hold on enforced removals, if

that remains the case, would be for procedural and administrative reasons which, as Mr Tufan submitted, are not issues for this Tribunal. There is nothing in the decision in SA (Iraq) to suggest otherwise: the issue with regard to enforced removals in that case concerned matters which are not relevant to this case.

20. The relevant question before me, therefore, is whether the appellant's circumstances and characteristics are such that he can be said to fall within a category of persons who would be exposed to a real risk of serious harm on return to Afghanistan. As Mr Tufan submitted, this was essentially a "living conditions" type case, as addressed in the country guidance for Somalia in OA (Somalia) (CG) [2022] UKUT 33, which required there to be a causal link between the Secretary of State's removal decision and any "intense suffering" feared by the returnee, which included a requirement for temporal proximity between the removal decision and any "intense suffering" of which the returnee claimed to be at real risk and which involved a high threshold to be met in order to demonstrate "intense suffering".

21. I start by considering the appellant's particular circumstances. He is a man of 50 years of age with no apparent health concerns. He is from Nangarhar and, when living there, worked as a mini-bus driver. He has no family or other ties to Kabul. He left his wife and parents in Nangarhar when he fled but his claim is that he has not had any contact with them since then. He has been away from Afghanistan for several years since January 2020 or earlier. He has not had a formal education. He speaks Dari and Pushto. He is the father of three sons who have all been naturalised as British citizens and live in the UK. The finding made by Judge O'Keeffe, that he was "highly likely" to have access to financial resources upon return to Afghanistan, has not been disturbed by the Upper Tribunal in the decision of 19 July 2024. The appellant has also been found to be of no adverse interest to the Taliban and to be at no risk on return to Afghanistan on that, or any other, particularised basis. There is no evidence of the appellant having any particular vulnerabilities.

22. On the basis of the country guidance in AS, the appellant is clearly a person who would have been able to return to Kabul despite the security and humanitarian situation there at the time and despite having no family or other network there and no experience of living in that city. The relevant question is whether that remains the case in the light of the current situation. The decision in this case is to be re-made on the grounds that it has been found that that was not a matter properly considered and reasoned by Judge O'Keeffe.

23. The Home Office Country Policy and Information Note "Afghanistan: Humanitarian Situation", version 2.0 of April 2022 which was considered by Judge O'Keeffe has now been removed from the gov.uk website as it has been replaced by the Country Policy and Information Note "Afghanistan: Humanitarian Situation", version 3.0 of August 2024. The 2022 report was contained in the appellant's bundle before Judge O'Keeffe but I have been provided with the August 2024 report, although I still have sight of the 2022 report. Mr Lams has helpfully provided a table containing and comparing extracts from both reports and showing further deteriorations in the situation since the 2022 report. I do not intend to quote extensively from the CPIN reports but confirm that I have had regard to both reports and the statistics provided therein. I provide a brief summary.

24. The humanitarian situation is summarised in the executive summary of the 2024 CPIN as follows:

"The number of people in need of humanitarian assistance in Afghanistan rose from

14 million in 2020 to 23.7 million in 2024. Food security improved slightly in 2023 compared to previous years but 13.1 million people still face high levels of acute food insecurity. Only 20% of the population has sufficient access to safe drinking water and just over half the population have access to basic sanitation services. Multiple events impacted the levels of internally displaced people in-country, including the deportation of Afghans from Pakistan and earthquakes in Herat province. An estimated 6.3 million people, roughly 1 in 7 Afghans, are internally displaced. This is the largest number of internally displaced persons (IDPs) in South Asia and the second largest worldwide.”

25.A more detailed account of the situation and the risks to the general population is set out in section 3 of the 2024 CPIN, and in particular at 3.1.8 and 3.1.9:

“3.1.8. The OCHA’s 2020 Humanitarian Needs Overview indicated that in 2019, 6.3 million people, 0.16% of the population, were in need of some form of humanitarian assistance. In June 2024 this had risen to 23.7 million, 0.55% of the population

3.1.9. A freeze in assets and foreign funding following the Taliban takeover has led to a severely fragile economy, reduced employment, and disruption in public services. The October 2023 earthquake in Herat and the return of Afghan migrants from Pakistan have also added to existing economic challenges. As the economy has shrunk the Taliban has restricted employment, particularly for women. Unemployment rates are high with the World Bank reporting that one in 3 young men aged between 14 and 24 are unemployed. Wages have stagnated and household income has declined with many Afghan families earning less than £0.78p a day with the poverty line set at £25.40 per month or £0.84p a day.”

26.The report goes on to provide detailed information and statistics under individual headings, as extracted by Mr Lams in his comparative table. Mr Lams relied in particular on the report at paragraph 7.1 of the 2024 estimated life expectancy for the total population being 54.4 years and the population living below the poverty line in 2022 being 85%.

27.The situation in Afghanistan in general terms is undoubtedly dire. However, as the report makes clear, living conditions vary depending on the circumstances of the individuals and groups, and the different areas of Afghanistan. In addition, whilst recording high statistics of scarcity, the report also notes slight improvements in some areas, such as food security (paragraph 3.1.10) and in particular in Kabul (paragraph 5.1.3), access to safely managed water (paragraph 3.1.11), and shelter needs (paragraph 3.1.13). At paragraph 7.2.2 the wealth index table shows considerable differences in statistics in various areas of Afghanistan, with Nangarhar having the lowest statistics for population wealth and Kabul having the highest. Paragraph 7.2.3 refers to the economy having stabilised since the significant contraction in 2021. With regard to employment rates, paragraph 7.3.1 refers to the UNDP reporting in April 2023 that there was no updated official data on unemployment, although noting a significant decline in the immediate aftermath of the change in government in August 2021 but followed by a slight improvement in 2022.

28.The conclusions in the CPIN are drawn from a variety of reports which in turn vary in their statistics and information. The Home Office has assessed and drawn together the information from these numerous sources and has formed the conclusion in the executive summary that:

“In general, the humanitarian situation in Afghanistan is not so severe that there are

substantial grounds for believing that there is a real risk that conditions amount to torture, or inhuman or degrading treatment as set out in paragraphs 3390 and 339 CA(iii) of the Immigration Rules/Article 3 ECHR.”

and, at paragraph 5.1.1, that

“Internal relocation to Kabul is likely to be reasonable for single men in good health”

29. The appellant has not relied upon evidence of the current situation in Afghanistan other than that set out in the CPIN reports. He did not provide any further information or evidence before me in regard to his own personal circumstances. His circumstances, aside from the issue of his age, are as found by Judge O’Keeffe.

30. I turn to consider the appellant’s particular circumstances against the background information and the deterioration in the humanitarian situation in Afghanistan, as set out in the CPIN reports. I have not been provided with information specifically directed at the situation in Nangarhar, other than that referred to above in the wealth index quintile table. Mr Lams submitted that it is unlikely that the appellant’s previous home in Nangarhar is still available to him given the number of years he has been absent from the country and the change in the country situation since his departure. It is also the appellant’s evidence that he no longer has contact with his family in Nangarhar, which evidence does not appear to have been disputed. Mr Lams proceeded with his submissions on the basis that it is assumed that the appellant would be returned to Kabul and accordingly, whilst I find there to be no risk on return to Nangarhar to the appellant in terms of threats to his life from the Taliban, it seems appropriate for me to base my findings on the situation for him returning to Afghanistan to live in Kabul.

31. When seeking to distinguish the appellant’s circumstances from the general situation of those returning to Kabul, the particular characteristics relied upon by Mr Lams included his age in terms of life expectancy and employment prospects, his lack of contacts in Kabul and the number of years he has been absent from Afghanistan. In regard to the latter, the appellant has been outside Afghanistan for 4 to 5 years, which is not an excessive period of time, albeit that there has been substantial change in that time. He lived in the country for over 45 years and is thus familiar with the customs and culture and the language of the country. As made clear in the CPIN “Afghanistan: Fear of the Taliban” report for August 2024 (section 3), he would not be at risk simply on the basis of having spent time outside the country and having claimed asylum abroad. With regard to the appellant’s age, whilst paragraph 7.1 of the CPIN “Afghanistan: Humanitarian Situation” August 2024 refers to a 2024 estimated life expectancy of 54.4 years, that figure is not particularly helpful given that it refers to the general population and is not particularised in terms of area, standard of living or other relevant factors. The appellant has not provided evidence of any particular health concerns and, given that he has the benefit of access to financial resources (as found by Judge O’Keeffe) not available to other sections of the population there is no reason why that figure of 54.4 years of age should be reflective of his own life expectancy. There is accordingly no reason to consider him as being old or elderly, as Mr Lams sought to suggest. Neither is there any reason why the appellant could not find employment. Although he is not educated, he worked for many years as a bus driver and was also previously employed in a mechanic shop (report of Dr Zahed at page 22 of the bundle before the First-tier Tribunal), and therefore has skills which would no doubt be of benefit in seeking employment. He does not fall within the categories referred to in the CPIN at paragraphs 7.3.2 as having particularly high unemployment, albeit that the levels of employment in general are substantially reduced. Although the appellant is accepted as having no

family or other particular ties to Kabul it is relevant to note that he was very familiar with the city ([43] of the report of Dr Zadeh, page 30 of the FTT bundle). His evidence at his asylum interview (questions 98 to 107) was that the bus route for his work was from Jalalabad to Kabul and that he would stay overnight for one or two nights in Kabul as part of that work.

32. As for the living conditions in general, in terms of food, water, accommodation and other such resources, the appellant would face a situation which has substantially deteriorated since he was last in Afghanistan, as the reports referred to above show. However the appellant would have the benefit of resources available to him. The findings made by Judge O’Keeffe in that regard have been preserved. In addition the respondent, in the refusal decision, confirmed that the appellant could receive assistance of up to £3000 from the voluntary returns service to assist him in finding somewhere to live and in setting up a business. Mr Lams made the point that it was not clear how that would be managed given the absence of systems in place in Afghanistan to facilitate such payments, but the respondent makes specific reference to the service in the refusal decision and it is therefore to be assumed that there will be a system in place to facilitate the payment. There is also no evidence to suggest that the appellant’s sons in the UK could not provide him with some financial assistance if he was living in Afghanistan. Mr Lams submitted that they had not kept in contact with him prior to his arrival in the UK and there is no reason why they would maintain contact with him if he left the UK, but clearly the circumstances are entirely different. There is no reason to suggest that they would not retain contact with him, particularly given the evidence in their statements before the FTT as to how they had made efforts to reconnect with him and how excited they were when they were reunited with him in the UK. As for Mr Lams’ reliance upon the background information in the CPIN in submitting that it would be difficult to make payments to Afghanistan, I note that paragraph 7.2.1 of the CPIN does not suggest that there has been a complete collapse of the banking system in that country.

33. Drawing all of this together, it does not seem to me that there is anything in the appellant’s characteristics or circumstances which would set him apart from the general position taken by the respondent in the 2022 and 2024 CPIN reports, in relation to an entitlement to humanitarian protection on Article 15(b) grounds in light of the current humanitarian situation in Afghanistan. The appellant could, if unable or unwilling to return to Nangarhar because of the general situation there, relocate to Kabul where the evidence, despite showing a dire humanitarian situation, does not suggest that he would be exposed to a real risk of serious harm. There are accommodation and employment possibilities open to him as a single, healthy male who is neither young nor elderly and he has, in any event, the benefit of financial resources to assist him in adjusting to life in that city.

34. Accordingly, I have to agree with Mr Tufan that the appellant has not been able to establish by his evidence, and with reference to his particular circumstances, that he can meet the high threshold to succeed on Article 15(b)/ Article 3 grounds. His appeal cannot succeed.

DECISION

35. The making of the decision of the First-tier Tribunal having been set aside, the decision is re-made by the appellant’s appeal being dismissed on Article 15(b) humanitarian protection and Article 3 human rights grounds.

Case No: UI-2024-000104
First-tier Tribunal No: PA/53302/2022
IA/08044/2023

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

23 September 2024