IAC-PE-AW-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: AA/03603/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On the 19th January 2015	**On the 26th February 2015**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

WA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Spurling, Counsel instructed by Malik and Malik Solicitors
For the Respondent: Mr N Bramble, (Senior Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant is a national of Afghanistan born on the 1st January 1989.

2. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant has been granted anonymity throughout these proceedings and after their conclusion, absent any order to the contrary by the Upper Tribunal or any other court seized of relevant proceedings. No report of these proceedings, in whatever

form, either during the proceedings or thereafter, shall directly or indirectly identify the Appellant. Failure to comply with this order could lead to a contempt of court.

The Background:

3. The Appellant arrived in the UK on the 14th May 2014 and claimed asylum on the same date. He was deemed suitable to be dealt with in the Detained Fast Track Process and was detained at Harmondsworth Immigration Centre. A screening interview took place on the 17th May 2014 and a substantive interview followed on the 28th May 2014. In a decision made on the 29th May 2014, the Secretary of State refused his claim for asylum/humanitarian protection and on human rights grounds.

4. In a refusal letter of the same date the, Secretary of State set out the full reasons for refusing his claim. The Appellant exercised his right to appeal that decision and the matter came before the First-tier Tribunal (Mayall) on the 9th June 2014 and in a determination promulgated on the 12th June 2014 dismissed his appeal. An application was made for permission to appeal that decision which culminated in permission being granted on the 17th June 2014 by First-tier Tribunal Judge Hodgkinson.

5. The matter came before Upper Tribunal Judge McGeachy on the 25th June 2014 who found an error of law in the determination of the First-tier Tribunal and set aside the decision in its entirety and listed the hearing as a resumed hearing before the Upper Tribunal for all matters to be considered afresh. He considered that the appeal should not remain in the fast track process and the matter was thus removed from that process under the provisions of Rule 30 of the Asylum, and Immigration Tribunal (Fast Track Procedure) Rules 2005.

6. The decision made by Upper Tribunal Judge McGeachy is set out below:-

"DECISION AND DIRECTIONS

1. The appellant, a citizen of Afghanistan, born on 1 January 1989, appealed against a decision of the Secretary of State made on 29 May 2014 to refuse to grant asylum and to make removal directions to Afghanistan. His appeal was heard by Judge of the First-tier Tribunal Mayall on 9 June 2014 and dismissed. On 17 June 2014 Judge of the First-tier Tribunal Hodgkinson granted permission to appeal.

2. The basis of the appellant's claim to asylum was that he worked for the American forces as an interpreter between May 2009 and May 2010, living with the US Army and returning to his home village on only two or three occasions. He had received a number of threatening letters, the first in 2009 but when, in 2010, he returned to his home to see his family he was told that the Taliban had come to the house saying that the appellant should either leave his work or he would be killed. He had worked for a further two months when the Taliban had again called on his family and further threats were received – he was threatened four or five times including receiving two phone calls.

3. His brother had also received threatening letters. He had attended a police station in January 2010 but the threats were not investigated by the police. He

had reported the threats to the US Army and they had advised him to leave his job. He had then done so, moving to Kabul to hide from the Taliban. However, there he was attacked twice by the Taliban in 2013. He decided to leave Kabul and left Afghanistan travelling via Iran.

4. The Secretary of State, while refusing the application, accepted that the appellant had worked as an interpreter for the US armed forces between May 2009 and May 2010. However it was not accepted that the appellant had received threats from the Taliban. Weight was placed by the Secretary of State on the decision of the European Court of Human Rights in **H and B v United Kingdom** of April 2013. It was not considered that the appellant's claim was credible and indeed the Secretary of State assessed that there would be a sufficiency of protection for the appellant in Kabul.

5. Before the appeal the appellant produced a statement from Kabul City Hospital stating that he had been treated for a bullet wound on 9 March 2013.

6. The judge noted the appellant's evidence about attempts made to recruit him by the Taliban and the threats he had received.

7. In his assessment of the evidence the judge noted that it was accepted that the appellant had worked as an interpreter for the US Army but he did not accept that the appellant had been further threatened and attacked in Kabul.

8. The judge referred to some background information, including a report which referred to an earlier report from Dr Giustozzi, and concluded in paragraph 86 that it was extremely unlikely that the Taliban would target the appellant who had quit his job in response to threats many years before and who was hiding quietly in Kabul. He said that there was nothing exceptional about this particular appellant. He concluded that the appellant could have continued to live in Kabul in safety.

9. Grounds of appeal argued that there had been procedural errors at the hearing, suggesting that the judge had "proceeded to make noises" to urge the representative to continue with his questions which had given the distinct impression that the judge was wanting to proceed to cross-examination as rapidly as possible. They stated that this was distracting and accused the judge of bias.

10. The second ground alleged that the judge had erred by misdirecting himself on a material matter – whether or not the attackers in the first attack had been in a vehicle or on motorbike. It was argued that the questioning by the judge was hostile. It was then argued that not only were the judge's findings perverse but that his conclusions were unreasoned and that he had failed to resolve conflicts of fact or opinion on a material matter.

11. At the hearing of the appeal before me Ms Fisher referred to the Suthendran guidelines and to the statement of Mr Wells, the Counsel who had appeared before Judge Mayall and argued that it had been wrong for the judge to interrupt the proceedings and that he had that, in any event, given the perception of bias. She argued that the reference by the Judge to espionage was a red herring in that that was not what the appellant had claimed. She agued that, in

any event the appeal should not have been in the fast track and that an expert report would have been of use. The appellant had claimed that he was targeted and this was a not an issue on which the judge had made any appropriate findings. Moreover, the background information on which the judge had relied related to interpreters for NGOs rather than those for the American army. She argued that the Judge had been irrational when considering the appellant's claim to have been treated for a bullet wound. Moreover, there was background evidence which referred to "night letters". In all she stated that the conclusions of the Judge were against the weight of evidence.

12. In reply Mr Phillips argued that Mr Wells, who had represented the appellant, was not present to be cross-examined on his statement and that there was nothing on the face of the determination to indicate that the Judge had been biased in any way. The Judge had considered the evidence and reached conclusions which were fully open to him thereon. The grounds were really a perversity challenge which had not been made out. He asked me therefore to conclude that the determination of the Judge should stand.

Discussion

13. I note the terms of Mr Wells' statement and the comments of Ms Fisher at the hearing. I do not consider that any allegation of bias against the judge had been made out. It is the nature of hearings in the fast track system that it is incumbent upon the judge to move the hearing along as quickly as possible and I consider that it may be a possibility that that was what the judge was doing. I do not accept that the judge was doing anything other than trying to get to the truth of this appellant's claim.

14. However, I am concerned about the conclusions of the judge that this appellant's claim was not credible. There are a number of instances where he reached conclusions where, given the background evidence relating to those who have been accepted as having been interpreters, I consider that there is merit in the argument that too high a standard of proof was applied in this case. I refer, for example, to the Judge's consideration of the appellant's claim that he had been shot at and had been treated at a hospital in Kabul and his assertion that he had received warnings from the Taliban.

15. While I consider that there was an error of law in the standard of proof applied I also consider that there was an error of law in placing weigh on the European Court of Human Rights decision in **H and B v UK** as that decision deals with the position of interpreters for NGOs.. I consider that it is likely that there would be an increased level of risk for those who were army interpreters and that therefore there was a material error of law in placing undue weight on that decision.

15. I therefore set aside the decision of the First-tier Judge. Although I consider that the findings of fact of the First-tier Judge cannot stand and I set aside the determination in its entirely I consider that it is appropriate that this appeal remain in the Upper tribunal.

16. I do not consider that it is appropriate that this appeal should remain in the fast track system. I therefore order that the appeal be removed from the fast track

system under the provisions of Rule 30 of the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005.

17. Moreover, given the issues raised I consider that it might well be of use if this appeal were considered as a vehicle for country guidance. To this end the appeal will be listed in due course for a "for mention" hearing at Field House.

Decision

18. The appeal will proceed to a hearing afresh on all grounds. I order that the appeal be taken out of the Fast track system. "

7. The case came before the Upper Tribunal (Deputy Judge Mailer) on the 19th November 2014. The case did not proceed and the appeal was therefore adjourned and directions were issued. The following was also recorded on the order by Judge Mailer:-

> "Mr Spurling informed the Tribunal that paragraph 15(a) of the Determination and reasons of Upper Tribunal Judge McGeachy is not correct to the extent that Appellant B in **H and B v UK** [15] had worked as an interpreter for the US Armed Forces and ISAF – para 15 of **H and B v UK**."

The Appellant's Claim:

8. The Appellant is a citizen of Afghanistan. He was born and grew up in Wardak Province between Ghazni and Kabul.

9. The Appellant started school at 9 years old and left school in 2008 when he was 19 years of age and went to work for a British company as a salesman. He left that job after about six or seven months as he was unable to support himself and the company closed down sometime after he left the job.

10. After undergoing a training course, the Appellant went to work as an interpreter for the US Military in May 2009 when he was 20 years of age. It is said that he worked at the Zormat US Military Base in Zormat, Paktia District and the Base was divided into two parts. One part was under US Army control and the other part under Afghan Army control. The Appellant worked in the part controlled by the US Army. Furthermore during his period of employment he had worked at two other camps (the Lightening Camp, an Afghan National Army Camp in Paktia and another Afghan National Army/US Army Camp based in Gardez City, Paktia). In the course of his duty he acted as an interpreter in questioning Taliban detainees.

11. During his time as an interpreter it is said that he first received threats from the Taliban over the telephone in 2009 (see paragraph 6 of statement 27/11/2014). There were several threatening calls that he should leave his employment or he would be killed.

12. In 2009 he received the first threatening letter but he was not particularly worried because his friend had received something similar which had proved to be a hoax.

The Appellant kept the letter because he thought there was a possibility that it may be genuine. The local district was in the nominal control of the Government and the Taliban were in the area.

13. There were also threats to his family. The Taliban attended the family home in 2010 in Wardak threatening to kill him and he received several threat letters. He reported these threats to the local district Afghan National Police Station but they refused to assist, saying that he was not important enough to merit protection. He reported the threat to his employers and they advised him to leave his job which he did in May 2010 because he and other members of the family were receiving threats from the Taliban.

14. After leaving his job in May 2010, the Appellant went to live in Kabul where he remained with his uncle and aunt until he left Afghanistan around four years later.

15. During the time that he spent in Kabul, it is stated that he received a threatening letter at his uncle's address at Chari Qambar, Kabul and was attacked twice. The first attack happened in or about January 2013. He said that this took place on a road which was not particularly busy and he had left the house with his cousin to buy bread. He was driving a car with the Appellant in the passenger seat. They bought bread and his cousin started the car. As they pulled away shooting started, there were three Taliban on motorcycles and they fired from behind. Four of the bullets hit the car and one hit the back window. They did not stop to look who it was. His cousin drove at full speed to get away from the danger. They drove to a police station, and the gunman left, where they lodged a complaint. The officer gave his telephone number and said he would look into it but every time the Appellant rang for an update the officer said that he was still looking (see paragraph 20 of A's evidence before the FTT).

16. The second attack took place in March 2013 when he was in the main town buying fruit from a shop which was a red shipping container set back from the service road. He was by himself buying fruit and the shopkeeper was inside his shop. The Taliban suddenly drove past on motorcycles and started shooting. There were two of them and as the motorcycles were making excessive noise he turned round. They were wearing black clothes, their faces were covered with black and white checked scarves. One of the bullets grazed his right arm near his shoulder and when they shot, he jumped into a drain which left the shopkeeper exposed. The shopkeeper had got two bullets in the left leg near to his hip. The Appellant said seven or eight shots were fired and a passerby came and took him to the hospital. He remained there for a few hours where he was given painkillers and put a bandage on the wound. The same person who took him to hospital then dropped him near his uncle's house in Kabul (paragraphs 21 to 24 of the Appellant's evidence FTT).

17. In his statement at paragraph 8, the Appellant stated that they accused him of being a spy when the attack took place.

18. After the second attack in March 2013 he started to stay at his auntie's home and lived in Dar el-Aman with her family about one and a half hours drive from Chari Qambar on the other side of Kabul. He stated that he used to move between his uncle's place and his aunt's and only went to Dar el-Aman during the night and was careful when he went out.

19. He was in hiding when living in Kabul (see paragraph 10 statement 24th November 2014). The Appellant left Afghanistan with the assistance of his uncle in or about September 2013. He travelled to the UK overland.

20. He asserted that his brother K was still receiving threats.

The Law:

21. The Appellant appeals to the Asylum and Immigration Tribunal pursuant to Section 82 of the Nationality, Immigration and Asylum Act 2002, (the 2002 Act), as amended by the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, (the 2004 Act), by a Notice of Appeal dated 4th November 2004 and the Tribunal has borne in mind the Grounds of Appeal set out in that notice, which refer to an alleged prospective breach of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, as well as a prospective breach of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), as that Convention has been incorporated into United Kingdom domestic law by the Human Rights Act 1998.

22. In reaching my decision I have borne fully in mind the relevant law and Immigration Rules, including the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and the Handbook on Procedures and Criteria for Determining Refugee Status ("The Handbook") (Geneva, January 2000). By Article 1(a)(2) of the Refugee Convention the term "refugee" shall apply to any person who:-

> "Owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable, or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence is unable, or, owing to such fear, is unwilling to return to it."

23. The provisions of **SI [2006] No.2525** "The Refugee or Person in Need of International Protection (Qualification) Regulations 2006" now bring into United Kingdom domestic law the Council of the European Union Directive 2004/83/EC of 29th April 2004 on "minimum standards" for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need protection and the content of the protection granted, normally referred to in the United Kingdom as the Qualification Directive. Commensurate changes were made in the Immigration Rules by means of Statement of Changes in the Immigration Rules also taking effect on 9th October 2006.

24. The determination I have made has approached the issues in this appeal from the perspective of the 2006 Regulations and in particular has applied the definitions contained there, in deciding whether the Appellant is a refugee under the 1951 Geneva Convention. I have also applied the amended Immigration Rules. These have permitted me to consider whether the Appellant is in need of humanitarian protection as being at risk of serious harm, as defined in paragraph 339C of the Rules. Finally, I have gone on to consider whether the Appellant is at risk of a violation of his human rights under the provisions of the ECHR.

25. The burden of proof is upon the Appellant. The standard of proof has been defined as a "*reasonable degree of likelihood*", sometimes expressed as "a reasonable chance" or a "*serious possibility*"'. The question is answered by looking at the evidence in the round and assessed at the time of hearing the appeal. I regard the same standard as applying in essence in human rights appeals although sometimes expressed as "*substantial grounds for believing*". Although the 2006 Regulations make no express reference to the standard of proof in asylum appeals, there is no suggestion that the Regulations or the Directions were intended to introduce a change in either the burden or standard of proof. The amended Rules, however, deal expressly with the standard of proof in deciding whether the Appellant is in need of humanitarian protection.

26. Paragraph 339C of the Immigration Rules defines a person eligible for humanitarian protection, as a person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned, would face a real risk of suffering serious harm. It seems to us that this replicates the standard of proof familiar in the former jurisprudence and, by implication, applies the same standard in asylum cases.

27. Accordingly, where below I refer to "risk" or "real risk" this is to be understood as an abbreviated way of identifying respectively:-

    (i) whether on return there is a well-founded fear of being persecuted under the Geneva Convention;

    (ii) whether on return there are substantial grounds for believing the person would face a real risk of suffering serious harm within the meaning of paragraph 339C of the amended Immigration Rules; and

    (iii) whether on return there are substantial grounds for believing that the person would face a real risk of being exposed to a real risk of treatment contrary to Article 3 of the ECHR.

28. In reaching my conclusions as to whether the Appellant will be at real risk on return, I have been further mindful that the amended Immigration Rules contain among other provisions, paragraph 339K which deals with the approach to past persecution and paragraph 339O headed "*Internal Relocation*".

29. The Appellant places specific reliance on Article 3 of the ECHR. It is for an Appellant to show that there are substantial grounds for believing that he or she is at real risk of ill-treatment contrary to Article 3 ECHR, which prohibits torture, inhuman or degrading treatment or punishment. The standard of proof equates to that in asylum appeals. Where there is a failure to show a breach of Article 3, there may be a breach of the right to physical and moral integrity under Article 8. Unlike Article 3, Article 8 rights are qualified rights protecting the right to respect for private and family life, home and correspondence. It is for an Appellant to show that one or more of such qualified rights is engaged and that there is an interference with such a right or rights. The Respondent must then show that any interference pursues a legitimate aim, is in accordance with the law and is proportionate.

The Hearing:

30. Thus the matter came before the Upper Tribunal on the 19th January 2015. At the hearing, the Appellant was represented by Mr Spurling, Counsel and the Respondent was represented by Mr Bramble, a Senior Presenting Officer.

31. Mr Bramble on behalf of the Secretary of State referred the Tribunal to the refusal letter dated 29th May 2014 in which it was accepted that the Appellant was an interpreter for the Army. Whilst the refusal letter raised questions of credibility concerning threats made to him in his home village, and the threats and attacks upon him in Kabul, Mr Bramble referred the Tribunal to the decision of the ECHR in **H and B** (the Appellant's bundle page 357) and submitted that whilst the Secretary of State had previously relied on paragraphs 97 and 98 of that decision that there was little evidence of the Taliban targeting interpreters, at paragraph 100 of that decision, the court considered that there would still be individuals who may be able to demonstrate a risk of harm in Kabul depending on the individual acts of the case. In those circumstances he submitted that on behalf of the Secretary of State he would accept that there are circumstances where interpreters who work for the American Forces can be targeted and thus it would not be necessary to go through the objective evidence and that if his case was found to be credible to the lower standard of proof concerning the events in Kabul then the Appellant will have proved his case. Thus it was also accepted that he had been threatened in his home town by the Taliban before leaving for Kabul.

The Evidence

32. The Appellant's legal advisors produced three bundles of documents in support of the appeal. The Appellant provided a consolidated bundle of 385 pages including a witness statement of the Appellant, various letters and ID documents, an objective bundle with a number of articles including UNHCR Guidelines and the COIS Report for 2013 and a copy of **H and B v UK (ECHR)**. In addition before the hearing there were two further bundles of documents, firstly a supplementary bundle which consisted of a number of articles and objective material (58 pages) and a second supplementary bundle which included further evidence including statements from T E Burd and ID document, witness statement of Z and ID document, witness

statement of AS and ID document, and a What's App exchange. That bundle numbers eleven pages. The Appellant also provided a copy of the Doctor's letter from Kabul City Hospital that was referred to by the First-tier Tribunal. Mr Spurling helpfully produced a skeleton argument upon which he placed reliance and also an addendum for the hearing which made reference to the country materials which had been produced in the Appellant's bundle. The Respondent relied upon the bundle including the decision and the accompanying reasons for refusal letter and the notes of screening interview and asylum interview.

33. At the outset of the hearing there was preliminary point raised about which language the Appellant would give his evidence in as Counsel had raised the issue about him giving evidence in English. However, it was agreed that as the nature of the court proceedings would include cross-examination and that as the interpreter was present it would be a safer course for him to give his evidence in his first language.

34. Mr WA gave evidence with the assistance of the court interpreter and gave evidence in the Pashtu language. I carried out an introduction of the proceedings so that the Appellant was familiar with the procedure that would be adopted during the court hearing and in particular I ensured that the Appellant and the interpreter could understand each other. There were no difficulties identified. I note that during the hearing there were no difficulties with the Appellant being able to give evidence or with the interpretation and no concerns were raised at any time during the hearing in relation to that.

35. There is a full record of oral evidence of that evidence which appears in the Record of Proceedings.

36. The Appellant confirmed his two statements (page 1 to 5 of the first bundle) and the statement dated 27th November 2014. Those were adopted as his evidence-in-chief. In addition, he was referred to his first witness statement (paragraph 6) in relation to the four letters. He confirmed that there were four letters, three to his home and one to his uncle's home. The first letter came in 2009 and his brother received two threatening letters in 2010. He confirmed that the two threatening letters that his brother had received were part of the four letters that he had received. Thus he confirmed he had received four letters in total. He was asked if he was allowed to work in the UK, what would he do, he stated he was interested in interpreting and would like to become a court interpreter.

37. In cross-examination he was asked about the time that he lived with his uncle. He confirmed that the first attack took place when living at his uncle's house and the second attack he said happened when he was coming from his aunt's house travelling to his uncle's house to buy things from the market. He said he was living at his aunt's house at the time of the second attack because after the first attack he changed his residence. He was referred to question 166 (B31) and why he did not mention in his screening interview that he was attacked in Kabul. The Appellant stated he was asked not to give all the details about attacks in the screening interview. He said he was going to give information but he was told not to give all

the information in the screening interview. He was asked to look at the screening interview (A8 4.1) and the question he was asked namely what was the reason for coming to the UK and a follow-up question, why was he in danger. It was put to him that he had said "I received threats from the Taliban because working for the US Army". In those circumstances why did you not mention the attack? The Appellant said that he mentioned the attack but when I was going to give more information I was asked not to do so. It was put to him that the word said "threat" not "attack" and he confirmed that it was different.

38. He was asked in respect of the individual attacks, he was asked about the month and year that they took place, he said he was under stress and could not remember each and every date. He explained that he had come here with difficulty and he could say the number of people but he could not remember the month or year of the attack. It was put to him that he had remembered it by the date of his witness statement.

39. He was asked about the attack further and referred to his witness statement (paragraph 15) where he said there were three. It was put to him that he was asked in the interview at B31 were they in vehicles and he replied "No". He was asked why he did not say they were on motorcycles. He said that by the word vehicle he understood the interpreter to mean a motor car. He was asked to explain and say why they were on motorcycles. The Appellant stated that he was asked if it was in a motor car and the answer was no. He said that when he was attacked there were three men but later on there were two people and there was one motorcycle. He was asked to confirm his evidence that there was one motorcycle and three people on it and he stated yes that there were three people riding one motorcycle. He was asked how he would know they were Taliban if he did not stop to look. The Appellant stated that when the first incident took place we saw them and left, we started the car and did not stop.

40. He was asked about the driver of the car whom he referred to as his cousin. It was put to him that he never mentioned his cousin's name but his cousin's name was Z. The Appellant stated that he had mentioned it before. He was asked to look at Z's letter in which he said there were two motorcycles. The Appellant said that he might have seen two motorcycles but the Appellant saw one motorcycle. It was put to him his cousin said he had seen two masked men when you saw three. The Appellant said that with his own eyes he saw one motorcycle.

41. As to the second attack, he was travelling from his aunt's house to his uncle's home and he was asked where he took a graze to his arm. The Appellant said it was to his left arm. He was asked to look at the letter from the doctor in which it said he had sustained an injury due to a single bullet wound resulting in severe soft tissue damage. He was asked why the doctor said it was severe when he had said it was a graze? He was asked if he had had any medical examination in the UK. The Appellant said he had not. He was also asked about the doctor's comments that the gunshot wound was as a result of an attack from the Taliban. He was asked how the doctor knew that? The Appellant said that when the attack took place it was understood it was by the Taliban and he had told the doctor that it was them. He

was asked why the court should place importance on the letter from AS who saw the second attack? He said that no-one had asked his name, about the cousin or the shopkeeper. In respect of the second attack he was asked that if he was travelling from his aunt's home back to his uncle's home, and his aunt's home was a one and a half hour drive away the Taliban must have worked out that the was living at his aunt's house. The Appellant said that was so. He was asked about his fiancé and he confirmed that she still was his fiancé and lived in Kabul. He said that she was not an extended family member and she does not live close to either the uncle or the aunt.

42. He was asked about the circumstances after the second attack in Kabul and whether the family who remained in the village received any more threats. He said they had received calls by the telephone asking for my address. He said the threats had not stopped and referred to his brother being in hiding. As to his uncle, he said that his uncle was very old and the Taliban do not harm ladies and that is why they had not been attacked. He was asked to confirm that the brother who had received two letters if he was the same brother who had gone into hiding and he confirmed it was. When asked why his brother went into hiding, he said when he left the country the Taliban went after his brother. He left Afghanistan in September 2013. He said that he went into hiding about one month after he left. The Taliban asked his brother about his address. He was asked when his brother decided to go into hiding. He said the Taliban visited his house several times asking for the address and his brother was afraid of them. He could not say when he went into hiding as he did not have much communication with him. He was asked about Z, and his location. The Appellant said that he was not in Afghanistan but was in Germany. He said he had received the letter from Z by fax but he did not have a copy of the fax transmission. As to the letter from the grocer AS, he said that his brother had sent it to him by fax but he did not have a fax transmission.

43. In re-examination he was asked about the first witness statement and was asked how many days before the hearing the statement was taken? The Appellant said he did not know. He stated that when he first got the document it was about three or four days before the hearing and that the information was given over the phone.

44. As to the gunshot wound he was asked what treatment he had and referred to questions 180-187 and 181. Therefore to clarify he was asked if the doctor sewed up his wound or bandaged it? The Appellant said the doctor only applied a bandage. He said he had not seen a scarring expert in the UK because he did not think it necessary. He said that he had a slight scar there. He was asked about contact with his brother K (questions 20-25 at B11, B12). At question 22 he had contacted his brother K two to three times since he left Afghanistan and the last time was three days before the asylum interview on 25th May 2014 and it was said that he had contact by phone and with a mobile. He was asked when did he find out his brother was in hiding? The Appellant said that he did not have much communication because he did not want to talk about difficulties because his sister became upset. He said a week ago he was also told that his brother was hiding from the Taliban.

45. There were some questions in clarification. The Appellant was asked how the documents from ZA and AS had come to the UK. He said those documents were sent by post and the copies came by fax but the originals came by post. When asked where the original documents were the Appellant pulled out an envelope. He said that they had been sent by post by his brother K and the envelope had a mark on it saying 4th January 2015, sent from Kabul City. When asked what the address was given on the envelope he said it was Kabul Section C. When asked why he was in Kabul, he said he had come to send the documents and was in hiding. He said he did not know the address given for his brother, it might be a friend but he did not know. There were no questions arising from that.

Submissions of the Parties:

46. At the conclusion of the oral evidence I heard submissions from each of the advocates. Mr Spurling had provided a skeleton argument at the last hearing and had produced at the hearing a further document. I have had regard to those documents when reaching a decision of the appeal. I shall briefly summarise those submissions.

The Respondent's Submissions:

47. Mr Bramble on behalf of the Secretary of State relied upon the refusal letter dated 29th May 2014. He confirmed the Secretary of State's position. It was accepted that the Appellant was an interpreter and accepting the background information and that that followed the decision of the ECHR in **H and B** it refers to individuals that can still be at risk acting as interpreters for the Allied Forces. Thus he submitted it came to a matter of the credibility of the Appellant's account and whether or not he was attacked in Kabul by the Taliban. He further accepted the evidence which was that in his home area there was a stronger threat and that he had given up his job as an interpreter because of those threats and that was not challenged. The issue was what has happened in Kabul, therefore he confirmed that he accepted the Appellant's account up until he had moved to Kabul.

48. Thus he submitted the two attacks that took place in Kabul had not been demonstrated to have occurred to the lower standard of proof. He submitted there was no mention of either attack in the screening interview and he had been given the opportunity to set out what had happened. The Appellant's claim was that he had kept his answers short but given the importance of this issue he should have stated that in the screening interview. As for the first attack, he could not remember the date but when looking at the questions he was specific about numbers and those involved but could not remember the actual date. Looking at the Appellant's account as to the incident there were three men on a motorcycle whereas his cousin had said there were two men on two motorcycles. When considering the second attack, the Appellant claimed he was wounded during the attack and had to go to hospital. In evidence he said it was a graze but the letter from the doctor referring to the incident refers to severe soft tissue damage which would suggest more than a graze. He did not have any sutures just bandages and there has been no subsequent

medical evidence provided to give any further information. There was also a letter from the grocer, the Appellant had never mentioned any name associated with the grocer and his cousin was also not named. There is a lack of clarity to the lower standard as to how much weight should be attached to those letters. The information came in a letter from Kabul dated 4th January 2015. K was in hiding yet there was time for him to send the information. When it was put to him, that there was no evidence of continuing threats he said that there had been last week. Mr Bramble submitted that that was simply to bolster his account.

49. As to threats in the home area, Mr Bramble submitted that it was surprising that his uncle and aunt who have assisted the Appellant have not been approached or harassed. His explanation for this was that his uncle and aunt were old but it is surprising that no-one had pursued the extended family. The objective material made reference to Afghan interpreters seen as a threat and thus it was even more surprising that the Taliban did not choose to find his fiancé who remained there unaffected.

50. It was further submitted that whilst his core claim might be consistent, the supplementary documentary evidence produced further concerns upon that evidence and there has been no clarity as to those events. Thus he submitted that he has not made out the threats to him in Kabul and had not shown there was any continued interest in him by the Taliban as a former interpreter and thus he would be able to return to Kabul where he has strong family connections having lived there for three years. Thus he would be at no risk on return.

The Appellant's submissions:

51. Mr Spurling relied on the skeleton argument that he had produced for the earlier hearing and also the addendum that related to the objective material and references to that.

52. As to the credibility of the account, Mr Spurling submitted that he had given credible evidence about Kabul and the events that had occurred there and that he had given a credible account and also a consistent one. He invited the Tribunal to consider the issue of consistency and that it was important to look at the evidence given and look at the reasons for the inconsistencies. The Presenting Officer had said that where there was an inconsistency, it was because it was not true and that thus it was important to bear in mind the surrounding circumstances including the passage of time and the circumstances where evidence was given, for example, the screening interview. In this respect he relied upon his skeleton argument. The asylum interview also was carried out whilst in detention shortly after a seven month journey to the UK and it would not be surprising if some of the answers did not demonstrate being able to provide all the information, in the light of those circumstances. He was in detention fast track, it was not an open interview and he did not set the pace of the interview. Furthermore the circumstances regarding the witness statement should also be taken into account.

53. As to the difference between the accounts given in the documents of his cousin and the doctor, he invited the Tribunal to take into account the fallibility of two peoples' memories when talking about the circumstances and that when people talk about an event often they disagree and that is completely normal but it is not enough to undermine the credibility of the Appellant's account.

54. As to the points raised by Mr Bramble, he submitted that the screening interview did not demonstrate that he had not given a credible account, the record of the answers were not verbatim but were brief notes and referred to his skeleton argument at paragraph 15. As to the date of the first interview, whilst he could not remember when first asked, he gave a date, a month and the year at question 148. His evidence was at the time he was interviewed he had answered 148 questions and was under stress but he could remember the details and that was the important part of the claim. As to those details he said that he saw three men on one motorcycle whereas his cousin said two men on two motorcycles. He said his cousin was driving the car. However it was important to understand the circumstances, it happened very quickly and neither were seeing the same view. The Appellant only gave an account as to what he was seeing and it was credible that they can remember the account slightly differently without making anything up. Furthermore it is possible that they were not looking at everything from the same angle and it is happening very quickly. As to the injury sustained, the Appellant said it was a graze and it was bandaged and whilst the doctor referred to it as a severe soft tissue injury this is the way it looked like to an expert. The Appellant was not trying to make the injury sound worse, he could have said it had been stitched but he did not. He said that there was a scar and the way he described the bullet striking him it went past and thus he called it a graze. As to the letters, he had already identified his cousin and his account was credible and consistent. The letters were posted from Kabul and the Appellant's account was that he did not recognise the address but assumed it must be a friend's address but that was consistent with someone leaving the village and having moved around.

55. Whilst the uncle and aunt and fiancé had not been harassed it is not known why they have not been targeted. Whilst the Presenting Officer raised the point that if someone was wanted by the Taliban their extended family would be at risk, there was no objective evidence to support that and it very much depended on the profile of the individual concerned. In any event the Appellant's evidence was the second attack took place at the uncle's house and there was nothing to say that the Taliban knew where the aunt lived. Thus the core of his account was consistent and there was no legal requirement to produce evidence in support of his claim but he had produced evidence and where there may be a difference in that evidence, that is not a reflection of its lack of consistency but that often happens when there are different people giving their view as to what had happened. It may have been the doctor was trying to help the Appellant and may have been more technical than necessary. However it does not mean that the evidence is false. Thus the account is credible and that he was attacked in Kabul.

56. In terms of risk, he made reference to the pages in the Appellant's bundle and the addendum showing interpreters face threats. He submitted that it was accepted that

he was an interpreter and further accepted that he had left his job because of the threats of harm that he had received and that was the reason why he had relocated to Kabul. Thus the question still remained that even if he had not experienced specific attacks in Kabul, is there a reasonable likelihood that he would be at risk on return? He referred to the background material showing interpreters were at risk and that there had been attacks upon them even after they had stopped working. He said the Taliban's reach was extending in Kabul and the insurgency after the troops had left was still intensifying (reference made to the supplementary bundle of background material).

57. Mr Spurling also relied upon his skeleton argument at paragraph 20 and the issue which he described as "causality and the relocation alternative". It was submitted that if he had ceased employment from fear or as a result of threat and would otherwise have continued to work as an interpreter, then relocation was not an alternative to persecution but evidence of it. He submitted that in Afghanistan, interpreting for the military was seen by the Taliban as evidence of political opinion which is a protected characteristic and therefore an interpreter who is unable to work in his chosen field because to do so would expose him to risk on the basis of an imputed political opinion is entitled to the benefit of the **HJ (Iran)/RT (Zimbabwe)** principle.

58. At the conclusion of the submissions I reserved my decision which I now give.

Assessment of Evidence and Findings of Fact :

59. I must make findings as to the credibility of the Appellant and the claim in the light of the totality of the evidence that is before me, including the background evidence, the medical evidence and that of the witnesses and the documentary evidence. The Respondent took the view that the Appellant's claim was not credible for the reasons indicated in her letter of the 29th May 2014. However, it is not in issue, I should say, that the Appellant is a national of Afghanistan and I so find.

60. I confirm that in reaching my findings I have considered all the evidence "in the round" in making an assessment.

61. I should first of all set out what is agreed between the parties. It is accepted by the Secretary of State that the Appellant worked as an interpreter for the US Army for the period from May 2009 until May 2010. The Appellant provided documentation in support of his work with the US Army in the form of photographs showing him pictured with other interpreters and members of the US Armed Forces as well as having provided ID cards for two of the three camps that he had worked in. In addition, the most recent evidence filed included a statement from a Platoon Sergeant T Burd, from the US Army, which also provides further support for his account of working as an interpreter and further information about his time with the US Forces based in Zormat. None of that is in dispute.

62. Mr Bramble, on behalf of the Secretary of State also accepts that the Appellant's account of events in his home area of Jaghato, a district of Wardak Province, whereby

he and his family members were threatened by the Taliban. This was by a threat made over the telephone in 2009 in which he received a threat to leave his employment as an interpreter or he would be killed and receiving a threatening letter in September 2009 and a visit made to his family home.

63. The issues of credibility that I have to decide relate to the events that the Appellant claimed to have occurred after he left his home area and when he relocated to Kabul. I have had the opportunity to consider the evidence, both documentary and oral evidence and in reaching my conclusions as to the account given, I have considered those events in the context of the country materials and the background material that has been placed before me.

64. When considering documentation, I remind myself of the guidance given in the decision of the Tribunal in **Tanveer Ahmed [2002] UKIAT 00439** in which the Tribunal acknowledged the argument that "documents and information contained in them may be either genuine or false; documents may be genuine but that information itself may be false; documents may not be genuine but the information may nonetheless be true". The Tribunal in that case went on to state:-

> "It is trite in immigration and asylum law that we must not judge what is or is not likely to happen in other countries by reference to our perception of what is normal within in the United Kingdom. The principle applies as much to documents as to any other form of evidence. We know from experience and country information that there are countries where it is easy and often relatively inexpensive to obtain 'forged' documents. Some of them are false in that they are not made by whoever purports to be the author and the information they contain is wholly or partially untrue. Some are 'genuine' to the extent that they emanate from a proper source, in the proper form, on the proper paper, with the proper seals, but the information they contain is wholly or partially untrue. … The permutations of truth, untruth, validity and 'genuineness' are enormous. At its simplest we need to differentiate between form and content; that is whether a document is properly issued by the purported author and whether the contents are true. They are separate questions. It is a dangerous oversimplification merely to ask whether a document is 'forged' or even 'not genuine'."

65. The only question is whether the document is one upon which reliance should properly be placed. Such documentation should be not looked at in isolation but should be assessed along with other pieces of evidence and therefore "in the round". I confirm that I have had in mind those words of the Tribunal when making an assessment of the variety of documents that have been produced in this case.

66. I have considered this part of the Appellant's account with care and the documents produced in support of it in the light of **Tanveer Ahmed** and in the light of the background country materials.

67. The first incident relates to an attack made upon him in January 2013. His account is that he had left the house with his cousin to buy bread and he was driving a grey Toyota Corolla and the Appellant was sitting in the passenger seat. He stated that they had just bought bread and as his cousin started the car and pulled away, they started shooting. He describes his attackers as three of them on one motorcycle firing

from behind. He further described that four bullets hit the car, one hit the back window and that they (the Appellant and his cousin) did not even stop to look who it was and they drove away at speed (witness statement paragraph 15 page 17 of bundle).

68. In support of the account he has provided a witness statement from a person he has now identified as his cousin Z (dated 11th June 2014, witness statement page 4). Whilst Mr Bramble submitted that he had never identified his cousin by name until the provision of this witness statement in what is now the second set of proceedings, I do not consider that to be a fair credibility point as no-one appears to ever have asked the Appellant the name of his cousin. However I have considered the evidence as a whole and in the light of the decision of **Tanveer Ahmed**. I find that the account given by the Appellant is not consistent with the account given in the witness statement provided. The Appellant's account is that he was attacked by three men all on one motorcycle. However the account given by the witness is that he saw two motorcycles with two masked men with turbans on, on each motorcycle holding pistols in their hands. Thus the evidence given is inconsistent as to the number of men who carried out the attack and the number of motorcycles involved in the incident.

69. The Appellant's claim in his evidence was that he did not stop to look who it was yet he was able to state in his interview that they were the Taliban describing them as having "big beards and turbans". In his interview, when recounting the events he made no reference to his assailants being on motorcycles at all. In interview at question 157, he was asked about his assailants and "Were they in a vehicle too?". The Appellant stated "No". He was asked in cross-examination why he had not said that they were on a motorcycle. He explained in his oral evidence that when the interviewer said "vehicle" he understood it to mean a motor car. Even if that were so, it is reasonable for him to have identified how his assailants had travelled to the place in which they intended to carry out the attack. Whilst Mr Spurling submits that the fact that the witness's evidence is inconsistent with that of the Appellant and that that should not count against him on the basis that witnesses may have different recollections of the events but necessarily the core is true, I do not consider that that satisfactorily explains what is an important inconsistency in the evidence concerning both the number of people responsible and the number of motorcycles involved.

70. The Appellant also gave an inconsistent account as to what happened in that attack. In his interview at question 154 he was asked if the attacker had said anything and he responded that they did not say anything. However in his witness statement (see paragraph 3 dated 27/11/2014) he stated "They started shooting and firing at me and accused me of being a spy". That is wholly inconsistent with the claim in his interview that on this attack the attackers had said nothing to him. If they had shouted at him accusing him of being a spy, I consider that he would have said so at the time he was interviewed when the events were clear in his mind.

71. After the second attack, the Appellant's account that on 9th March 2013 he was buying fruit and the shopkeeper was inside the shop and "they drove past on their

motorcycles and started shooting". He described two men wearing black clothes with their faces covered. He further described the incident as follows:-

> "They shot at me, one bullet grazed my right arm near my shoulder." (see paragraph 16; page 4 witness statement).

72. He described jumping into the drain which left the shopkeeper exposed and that the shopkeeper was injured having received two bullets in the left leg. He described a "random passerby" taking him to hospital. After treatment he stated "I remained there for a few hours. They just gave me painkillers and put a bandage on the wound." (paragraph 17; page 4 witness statement).

73. The Appellant has provided two documents in support of his claim; a letter from the doctor who it is said treated him at the hospital and the shopkeeper who witnessed the incident. I have considered that evidence with care but find that it is inconsistent with the Appellant's account as to the events that he claimed occurred on that day. The doctor's letter is on headed notepaper "Kabul City Hospital" and is undated. It is entitled "To whom it may concern" and states the following:-

> "This is a letter to confirm that Mr W A was treated in Kabul City Hospital on 9th March 2013 for an injury to his left arm. This injury was sustained due to a single bullet wound resulting in severe soft tissue damage. The gunshot wound was a consequence of an unprovoked brutal attack from the Taliban, in an attempt to execute my patient Mr W A. If you have any further queries, please feel free to contact me at any time on the details provided."

74. It is signed by Dr Javid Shahab described as a "Senior Consultant".

75. Whilst the refusal letter raises as an issue of credibility that an Internet search was made on all the hospitals in Kabul and it did not identify "Kabul Hospital" as one that existed in Kabul; this being the name that the Appellant had initially given to the Secretary of State as the place he was treated, I do not place any weight on that point as a factor adverse to the Appellant.

76. However the description of the injuries received and the site of the injury and the mechanism is wholly inconsistent with the evidence given by the Appellant.

77. As for the mechanism of the injury, the doctor's letter states that the injury was sustained due to a single bullet wound resulting in severe soft tissue damage. However this description of the injury is not consistent with the Appellant's account. In his interview he was asked about his injury and specifically if the bullet entered his arm. He was clear and stated that it did not and that the interview record demonstrates that the Appellant showed the interviewer a "grazing act" and later confirmed that his arm was bandaged. The same was said in his oral evidence. I do not accept the description given by the doctor of a single bullet wound resulting in "severe soft tissue injury" to be consistent with a graze which required little or no treatment save for painkillers and a bandage. The doctor later describes it as a "gunshot wound" and that also in my judgment is inconsistent with the account given by the Appellant as to the nature and mechanism of the injury. Mr Spurling

submits that there is in reality no inconsistency with the Appellant referring to it as a graze and the doctor referring to the same injury as a severe soft tissue injury and that whilst the doctor had described it in that way, it may not have been seen as severe by this Appellant. However I do not consider that properly accounts for the difference between the two descriptions. Furthermore, this letter has been before the First-tier Tribunal and there has been no attempt to either clarify that evidence or to seek further evidence of the doctor notwithstanding its contents and that the letter acknowledges that if there are any further queries or clarifications necessary, the doctor would be able to answer such questions.

78. A further important inconsistency in my judgment is to the site of the injury. The Appellant in his witness statement at paragraph 16 (page 4) identifies that the bullet grazed his "right arm near my shoulder". The same evidence was given before the First-tier Tribunal (paragraph 75). However the letter from the doctor identifies the site of the injury as his left arm. I do not believe that if the Appellant had sustained an injury to his person in that way that he would not have been consistent as to where he had sustained such an injury. Whilst in his oral evidence he stated it was his left arm, it does not explain when giving his account in the witness statement that he clearly identified it as happening to his right arm; a statement he accepted in his evidence not only before this Tribunal but also before the First-tier Tribunal as an accurate reflection of his account.

79. As to the statement from AS (see witness statement 6th December 2014), there has been no explanation as to why this statement has not been provided before. I find the contents of the statement are also inconsistent with the Appellant's account as to the alleged perpetrators. The witness describes seeing a customer lying on the shop floor and "a person who arrived on a motorbike fired at me". However in the Appellant's account there was more than one assailant and gives a description in his witness statement of being a number of men driving past on "their motorcycles".

80. The Appellant did not make any reference to have been either the subject of a physical attack or being shot by the Taliban in his screening interview on 17th May 2014. At question 4.1 he was asked about his reasons for coming to the UK and he gave an answer that his life was in danger and he fled to the UK. The interviewer followed up that question with "Why was it in danger?". The Appellant replied "I received threats from the Taliban because I was working with the US Army". He was then asked at 4.2 "Can you briefly explain why you cannot return to your home country?". He answered "I received a threat from the Taliban that I would be beheaded".

81. I have taken into account the explanation given by the Appellant for there being no reference whatsoever to any physical injury or being shot at. In his asylum interview at question 166, he was asked why he did not mention the attack in the screening interview. He explained "They said don't go into any detail but say why you are scared". At question 167 he was asked "Were you scared of the attack?" the Appellant replied "Yes". At question 168 he was asked "So why not mention them before?". The Appellant replied "I was scared but they said don't mention

everything". In his witness statement at page 2 paragraph 7, he gave an explanation that he had tried to mention it to the Interviewing Officer that he had been shot by the Taliban but he was told not to go into details and that all relevant information will be taken at the full interview. He goes on to state "I did mention I had been shot but they did not write that down anywhere in the screening interview". In his oral evidence he stated that he was asked not to give all the details.

82. I do not accept that the Appellant has given a plausible explanation as to the failure to make reference to what was a central feature of his factual account namely having been physically injured or being shot at on two separate occasions. Whilst I would accept the submission made by Mr Spurling that a screening interview is not intended to give a full account of all events, that does not explain why, even if he was asked to provide brief details and keep his responses short, that he did not mention the two attacks which really were the core of his claim to be at risk of harm.

83. Furthermore, I cannot accept his account that he did mention that he had been shot but it had not been written down anywhere (see written statement paragraph 7 at page 2). If the Appellant had stated to the interviewer that he had been shot, I do not find that such an important detail would either have been inadvertently missed off the record of interview or that the interviewer would not think it important enough to record. This is the most serious incident to support his account and I do not believe that the interviewer had failed to record something like this which was of potential significance to his claim.

84. I further find that the Appellant has given no coherent or cogent account as to how the Taliban, who had targeted him in his home village, had located him in Kabul. The chronology of events was that he had moved there in May 2010. Even on his own account the two incidents took place in January and March 2013 (there also being a letter sent in later on in 2013) and therefore there had been no interest in him for nearly three years after leaving his home village. It was his own account that he had stopped work as an interpreter in May 2010 having been asked to do so and that he did not work in this capacity in Kabul (see paragraph 10 witness statement) as he could not go anywhere openly as it was too dangerous to look for interpreters' jobs (see witness statement paragraph 13). In interview he was asked why the Taliban was still threatening him (question 190) and he replied "I don't know because I was working with the US Government". When the interviewer followed up with the question as to why they would be interested in him now, the Appellant could give no explanation stating "I don't know". Furthermore in cross-examination, he was asked about the communication threats to his family who remained in the home village. He said that the Taliban had called by telephone asking for his address. However the Appellant has not properly explained how the Taliban had tracked him down if they did not know his address and were asking his family for it and why they would continue to do so three years after he had left his employment which is what they have requested him to do.

85. I have also considered his account of what had happened to members of his extended family with whom he lived with in Kabul. He was asked about their

position in cross-examination. The first attack took place when living at his uncle's house therefore the Taliban would have known where he was living and knew in relation to the second attack that he lived at his aunt's. In cross-examination he accepted that when the second attack took place he was travelling from his aunt's house back to his uncle's house. The aunt's home was one and a half hours drive to the other side of Kabul and he accepted in cross-examination that the Taliban would have worked out that he was living at his aunt's house to target him en route. However neither his uncle or aunt has been the subject of any threats or reprisals either at the time when the Appellant was residing in Kabul or at any time thereafter. When asked to explain why that should be so, the Appellant stated that his uncle was "very old" and that the Taliban "don't harm ladies". I do not find that either of those are adequate explanations for the lack of interest shown in his close family members. Whilst Mr Spurling submits that there is no objective material to demonstrate the Taliban target family members, that is not supported by the material in the Appellant's own bundle. At page 33, the UNHCR Report makes reference to the targets of reprisals and civilians associated with or perceived as supportive of the ANSF or the IMF. It makes a reference to civilians, including children, who are reported to be targeted on the basis of suspicions that members of their families worked for the ANSF. At page 15 of the supplementary bundle there is an article referring to an interpreter whose family was killed by the Taliban near Kandahar in which it is asserted that the Taliban had threatened to kill him and his family because he was an interpreter for the Canadian Forces. Thus there is evidence that members of the Taliban do target family members. The Appellant's fiancé also continues to live in Kabul and he confirmed in cross-examination that she had had no interest shown in her by the Taliban.

86. As to his brother, it is claimed that he has received recent threats and has gone into hiding. There is no reference to such threats in his witness statement of 27th November 2014. When specifically asked a number of times as to when he went into hiding, he first of all said that he had gone into hiding when he had left the country stating "When I left the country they went after my brother". He was asked when he left Afghanistan and he stated "September 2013". When asked, when after September 2013 his brother went into hiding, he claimed that it was one month after leaving that the Taliban had asked his brother about his address. He was asked again when his brother decided to go into hiding and the Appellant's answer was that the Taliban had visited his house several times to ask for the address. When pressed to give dates as to when his brother had gone into hiding, the Appellant stated "I did not have much communication with him; he keeps himself and lives with relatives' and friends' houses in the village". His account of his brother going into hiding was vague and in his evidence failed to answer questions as to when this actually occurred. However later evidence from the Appellant was that his brother was in Kabul and that he had sent documentary evidence to him for the purposes of the appeal hearing on 4th January 2015 and this was evidenced by the production by the Appellant of an envelope sent from his brother with an address in Kabul City Section C. At this point the Appellant stated that a week ago he had been told that he was in hiding there but when asked in cross-examination if he had told him when

he had started hiding the Appellant stated "He didn't tell me". The evidence he has produced is that his brother had sent him documents from Kabul. He did not know the address and thought it might be a friend. In the light of that evidence, I find that it is unlikely that he would go to Kabul if he knew that that was a place where his brother was targeted. From that evidence, it appears that he felt sufficiently safe and secure to obtain statements and further documents and to send them to the Appellant and I do not accept that his brother is at a current risk of harm in Kabul.

87. I have also considered the background country materials relating to the Appellant's claim. It is plain from reading the evidence as a whole that the UNHCR have identified in their eligibility guidelines for assessing the international protection needs of asylum seekers from Afghanistan in 2013 as those who are individuals associated with, or perceived as supportive of, the Government and the international community, including the international military forces and in that context those who work as interpreters for either the UK of the US forces would fall into that category as civilians associated with or perceived as supportive of the ANSF or the IMF. There is evidence within the Appellant's supplementary bundle of interpreters in their home areas being targeted by the Taliban as a result of their activity. It is accepted that the Appellant was targeted by the Taliban in his home area in Wardak Province, an area in which the Taliban are active and where the Appellant states the Taliban control most of the Province (paragraph 2 witness statement 27th November 2014). However I have to consider the materials relating to Kabul, and in the context of the Appellant's factual claim. The evidence in the EASO Report refers to the position of cities and in particular Kabul. It is recorded that a political analyst based in Kabul stated "There are primary targets (red/high risk), like interpreters, contractors and suppliers of the military and high ranking Government officials. The risk for mid-ranking Government officials is lower (yellow/orange). There is a low risk for the low ranking or ordinary Government officials in for example Mazir or other areas in the north. Only when travelling in volatile areas in the south, southeast or east there is a risk for the latter, as there is for anyone, ordinary people or NGO staff for example. Mid or low ranking profiles are not at risk in Kabul, Herat or Mazir, except if there was another specific reason for targeting".

88. It is reported that Dr Giustozzi stated in 2011 that in cities or in Kabul, the Taliban usually devote their efforts at attacking higher profiles, ranking from serving Government officials upwards. Dr Giustozzi stated that in Kabul, colonels in the army and the police have been targeted as well as commanders of security services, but that in the south, officials of all ranks were targeted. The material goes on to state "This point of view was shared by UNAMA that stated in 2012 that high profile persons might be targeted in Kabul, but that it was not likely that the Taliban would make it a priority or would have the capacity to track down low profile individuals in Kabul. According to the Danish Immigration Service the UNHCR also confirm that, most probably, the Taliban would not make it a priority to track down low profile people in Kabul. Several other organisations interviewed by the Danish Immigration Service, such as the AIHRC, the International Organisation for Migration (IOM) and Co-operation for Peace and Unity (CPAU) agreed that it would most probably not be the Taliban's priority to track down low profile people in

Kabul. The IMO added that the security situation in Herat City and Mazir is similar to the situation of Kabul.

89. The report at page 108 further goes on to state:-

> "The Danish Immigration Service referred, in their Fact-Finding Mission report of May 2012, to an independent policy research organisation that stated that Afghans associated with or employed by the IMF do not run a high risk of being targeted if their workplace is Kabul. If their workplace is outside of Kabul, however there is a high risk for them regardless of the kind of job or position they have. This includes contractors, service staff, drivers and interpreters. The Danish Immigration Service also referred to the UNHCR that stated that all Afghans who are associated with foreigners could be at risk in Kabul or other parts of the country. However according to the UNHCR, the risk is higher outside Kabul…. Thus the conclusion of the EASO Report was that higher profiles face a real risk of being targeted by insurgents in all parts of Afghanistan including Kabul City but that in general, low profiles do not face much risk of being targeted by the insurgents in the cities of Kabul, Mazir and Herat because of their position, activity or job as such. However, individual and specific circumstances might lead to an increased risk."

90. Further information in the bundle make reference to those who are either escaping threats, defecting or quitting activity and fleeing the area. This would fit the profile of the Appellant who claims to have been threatened by the Taliban to cease his work as an interpreter, which he did, and left his home village to live in Kabul. At page 110, it is cited that Dr Giustozzi explained in 2011 that Government collaborators were aware of the effective Taliban intelligence systems and avoided Taliban controlled areas. He further stated that the Taliban have the ability to track down and target people who go to work and do not hide but Dr Giustozzi stated that:-

> "Those escapees who stop their collaboration with the Government were a low priority for the Taliban in the cities or in Kabul and they have not been actively targeted any longer, neither have their relatives. The Taliban did not seem to transfer information about targeted individuals from one area to another; they have no databases. There could be a request for information on an individual from one area to another if needed, depending on the Taliban's activities. It is also recorded that the UNAMA sometimes brings its staff to Kabul when they are facing a security risk. According to the Danish Immigration Service, the UNHCR also confirmed that, most probably, it would be possible for low profile people fleeing a conflict with the Taliban in his area of origin to seek protection within his community in Kabul. The UNHCR advised assessing this case by case."

91. Whilst at page 111, another political analyst in Kabul considered the risk to an interpreter if they quit their activity, who could escape if he joined the Taliban or contacted them and proved to them he was no longer supporting the Government or the IMF, the analyst went on to state the risk is also confined to areas in the easy route to the Taliban such as rural areas. He did not identify Kabul as such an area. Thus the summary at page 111 demonstrates that those who quit their activity and moved to cities have not been the subject of any targets and that whilst the Taliban had the possibility to track people down who went to work, it was not a priority for

them in cities such as Kabul. The UNHCR confirmed that it would be possible for low profile people to escape targeting if they could relocate within their community in Kabul. It is plain from reading the article as a whole that whilst the individual circumstances of a particular person determine whether the Taliban would target or threaten a person after he quit his job, stopped his activities or defected, examples of circumstances which increased such a risk were identified as there being either a feud with the Taliban or the profile of the victim working for the IMF or the ANSF. Neither of those apply to this Appellant as it is not said he was in feud with the Taliban nor is he said to be working for the IMF or the ANSF in Kabul and also he remained there from May 2010 until almost three years later on his own account with there being no interest in him by the Taliban.

92. The Appellant has produced an extract of the UNHCR eligibility guidelines of August 2013 in which individuals associated with, or perceived as supportive of the Government and the international community may be at risk and therefore a careful examination is required of those individuals. At page 32, it is noted that in 2012 the campaign of systematic targeting intensified with UNAMA documenting the deaths of 698 civilians and the wounding of 379 others in incidents of targeted killings or attempted targeted killings. The first six months of 2013 saw a further 29 increase in civilian casualties as a result of such attacks compared to the same period in 2012, with 312 civilians killed and 131 injured. Among the primary targets of such attacks are national or local political leaders, Government officials, teachers and other civil servants, off duty police officers, tribal elders, religious leaders, women in the public sphere, civilians accused of spying for pro-Government forces, human right activists, humanitarian and development workers, construction workers and persons supporting the peace process. They have also reportedly threatened and attacked Afghan civilians who worked for the IMF as drivers, interpreters or in other civilian capacities (page 33).

93. I have considered the Appellant's account of events in Kabul in the light of the documents that he has produced in support of those events and in the light of the country materials. I do not find that the Appellant has given a credible or consistent account as to having been the subject of two attacks in Kabul either in January or in March of 2013 for the reasons that I have given. When considering the attacks in the context of the background country materials, whilst I have set out the evidence as to risks to interpreters in general, I do not find that that evidence demonstrates that the Appellant has demonstrated a reasonable likelihood that he was specifically targeted when he lived in Kabul. The evidence of Dr Giustozzi at page 112 of the bundle was that there was no reporting of targeting of those who flee to urban centres such as Kabul. The evidence also demonstrates that whilst there are possibilities of the Taliban tracking down those individuals although no databases exist, it would not be a priority for them. The factual circumstances of the account also demonstrate that the Appellant was not targeted by the Taliban in the way that he claims. On his own account he left his home village where he had been of interest to the Taliban by leaving his employment as an interpreter and leaving the area. He did not receive any interest by the Taliban until some three years later. He had been living in Kabul and had not been working as an interpreter nor had he sought any such work, thus

there was no reason for the Taliban to have any interest in him. Therefore taking the evidence as a whole, I do not find that it has been demonstrated that the Appellant has discharged the burden upon him to show that he was the target of the Taliban in Kabul during the time that he resided there.

94. Mr Spurling submits that even if the Appellant's account as to the events in Kabul are not found to be credible that his past profile as an interpreter would now lead him to be at risk of harm in the light of the recent country evidence. I have therefore considered that submission in the light of the most recent material provided on behalf of the Appellant in the supplementary bundle. Since the Appellant has left Afghanistan there have been two rounds of presidential elections amid serious security threats and nationwide security responsibilities were transferred from NATO to an undertrained Afghan national security force. The election resulted in a National Unity Government in Kabul headed by President Ghani and Abdullah Abdullah (his runner-up) as Chief Executive (see page 4: A's bundle). There still remains a violent insurgency (page 5) and the news reports make reference to an intensified Taliban insurgency coupled with daunting economic and political governance challenging Afghanistan in 2014. The material in the bundle make reference to attacks on the Taliban upon police officers in the Northern Afghan Province at a checkpoint (page 6) and there is no dispute from that evidence that members of the Taliban continue to undertake attacks in Afghanistan upon civilians. The UNAMA reported that civilian casualties and deaths in 2014 had increased (page 7) including a suicide bomb attack in a high school theatre in Kabul in December 2014 (page 8) and a dozen "high profile" attacks including suicide bombers in a foreign guest house near the National Parliament and the killing of a South African aid worker.

95. The Appellant relies on specific news reports relating to interpreters. However those reports do not demonstrate that the Taliban are searching and targeting interpreters who have left their home area for large cities such as Kabul. Nor does it demonstrate that those who returned to Kabul who were formerly interpreters are at risk. At page 19 there is a reference to aid Afghan workers who were killed on their way to work at an American Military Base (in July 2013). A further article makes reference to the Taliban kidnapping four interpreters in Khost Province but this is a report from 2010 and does not relate to the circumstances of this particular Appellant returning to Kabul. There is further reference at page 34 of an interpreter now living in Kunar Province having previously worked for the UK forces in Helmand Province. At page 39 of the bundle a BBC news article makes reference to interpreters working with the US forces in Afghanistan being hunted down by the Taliban. A reference is given to a man called Nader who lives an hour's drive north of Kabul in hostile territory for the Taliban. He was found in his village but it is stated that as a result "he, like many other former interpreters remaining in Afghanistan, now lives in Kabul". Whilst he states that he is not safe in Kabul, the article does not provide support for the Appellant's claim that as a returning resident of Kabul that he would be at risk of harm solely as a result of his previous employment.

96. It is plain from reading the UNHCR 2013 guidelines, (although there is only an extract in the Appellant's bundle) that those who are associated with or perceived or supportive of the Government or the international community or forces may, depending on their individual circumstances, be at risk on account of their (imputed) political opinion, particularly in areas where armed anti-Government groups are operating or have control. However it is also clear that not every person with links to the international community or forces would automatically be at risk in Afghanistan.

97. Having considered the evidence before me, I do not find that the Appellant has given a consistent, credible account concerning the events he claims have taken place in Kabul for the reasons that I have set out. I therefore find that notwithstanding the problems that he faced in his home area in 2009 and 2010, that in May 2010 until he left in September 2013, the Appellant was able to live in Kabul with members of his extended family without any interest being shown in him.

98. Furthermore, I do not consider that the country materials demonstrate that there is any risk identified to the Appellant from his profile as a former interpreter now having relocated to Kabul. His profile is such that he would return to Kabul, a city where he has close family members residing, including his fiancé, uncle and aunt who have remained there unharmed and unmolested by the Taliban. Even if his account is right that his brother has left his home village and is now in Kabul, there is no credible or cogent evidence before the Tribunal that the Appellant would now be targeted by the Taliban on return in the light of the findings of fact made that he had lived there for a prolonged period prior to his departure in September 2013; a period which postdated his work as an interpreter and indicates that he has not demonstrated that he is at a reasonable likelihood of being at risk of harm upon return.

99. A further argument advanced on behalf of the Appellant is on the basis that if the Appellant ceased employment from fear or as a result of a threat and would otherwise have continued to work as an interpreter, then relocation is not an alternative to persecution but evidence of it. In this context it is submitted by Mr Spurling that in Afghanistan, his work as an interpreter for the military is viewed by the Taliban as evidence of political opinion which is a protected characteristic and therefore in essence, an interpreter who is unable to work in his chosen field because it would expose him to risk on the basis of imputed political opinion, is entitled to the benefit of what it described as the "**HJ (Iran)** - **RT (Zimbabwe)** principle".

100. In his oral submissions Mr Spurling did not seek to provide any legal authorities in support of that submission nor did he take the Tribunal to any paragraphs of HJ (Iran) or RT (Zimbabwe) and made it plain that he was not saying that work is necessarily a fundamental right but that if he is not able to undertake a job and is prevented from doing so through fear then that is a sign of continuing persecution and therefore relocation cannot apply.

101. I have therefore considered the argument advanced on behalf of the Appellant which is in effect a reference to the modification of his behaviour and whether it is a case of

the Appellant modifying his behaviour to be an interpreter to avoid persecution and whether this gives rise to a need for international protection. **HJ (Iran v Secretary of State** [2011] 1 AC 596 set out the approach the Tribunal is required to take when considering circumstances where potential persecution may be avoided by the concealment or exercise of discretion as opposed or part of internal relocation. In the decision of **RT (Zimbabwe v Secretary of State** [2012] UKSC 38 the Supreme Court considered whether an individual who has no political views and who did not support the persecutory regime in his home country can be expected to lie and feign loyalty to that regime in order to avoid persecution. The relevant paragraphs of the judgment for the purposes of this appeal are at paragraphs 47-52 and the distinction between core and marginal rights. The same point is made a paragraph 90 of HJ (Iran) and that for the purposes of refugee determination, the focus must be on the "minimum core entitlement conferred by the relevant right". Thus where the risk of harmful action is only on the margin of a protected interest is prohibited, it is not logically encompassed within the notion of "being persecuted."

102. In this context I do not find that such modification, even if it took place would result in a change to a core right such as religion, sexuality or ethnicity (as set out in the Qualification Directive). **RT (Zimbabwe)** applying **HJ (Iran)**, to political rights made it plain that there was a right not to have to lie about an absence of political rights and views as an example of political opinion. However, on the facts of this appeal, the Appellant's wish to take up employment as an interpreter does not involve the protection of a core right and it cannot properly be said the Appellant has lost his right to be gainfully employed. Whilst he may wish to work as an interpreter, that does not prevent the Appellant undertaking gainful employment in any other field in which he can use his experience in the English language. I therefore do not find that it can be said that in those circumstances relocation is not an alternative to persecution and that on the facts of this case, the Appellant can return to Kabul to live with his extended family members safely as he did previously.

103. The Qualification Regulations define "refugee" and Immigration Rule 339C defines when a person will be granted "humanitarian protection". An Appellant is entitled to refugee status if he has a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group on a return to his or her home country. If an Appellant does not qualify as a refugee then he will be granted humanitarian protection if substantial grounds are being shown for believing that the person concerned, if he or she returned to his or her own country, with other reasons a real risk of suffering serious harm.

104. As a result of the findings of fact set out in the earlier part of this determination the Appellant does not qualify as a refugee or for humanitarian protection for the reasons given.

105. If an Appellant neither qualifies as a refugee nor has been granted humanitarian protection, it would then be relevant that either Appellant may also have a human rights claim if returned to their home country would breach their protected human rights under the Human Rights Convention.

106. The Appellant relied on the Human Rights Act 1998. The Appellant claims that she is fearful upon his return that he will be the subject of serious harm. Upon the material facts of the matters which are those set out above and the background material before me and for the same reasons set out in relation to the refugee aspect of the appeal, I find that the Appellant has not shown that he will experience torture, inhuman or degrading treatment or punishment for the reasons claimed. I find that substantial grounds have not been shown for believing that the Appellant would face a real risk of being subjected to treatment contrary to Articles 2 and/or 3 (see **Chahal v the UK [1997] 23EHRR 413** and therefore this in respect of the appeal also fails.

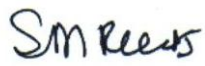
Decision:

1. The decision is remade as follows:

2. The appeal is dismissed on asylum and human rights grounds. The Appellant is not entitled to a grant of Humanitarian Protection.

Direction Regarding Anonymity – Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or Court directs otherwise, no report of these proceedings shall directly or indirectly identify the Appellant. This direction applies to both the Appellant and to the Respondent and a failure to comply with this direction could lead to Contempt of Court proceedings.



Signed

Date 22/2/2015

Upper Tribunal Judge Reeds