



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

Appeal Number: IA/01707/2020  
PA/51872/2020 [UI-2021-001332]

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 22 June 2022**

**Decision & Reasons Promulgated  
On 8 August 2022**

**Before**

**UPPER TRIBUNAL JUDGE BLUM**

**Between**

**NY  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the appellant: Ms C Physsas, counsel, instructed by Waltham Forest  
Immigration Bureau

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

**DECISION AND REASONS**

1. Pursuant to s.12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007 the Upper Tribunal remakes the decision of Judge of the First-tier Tribunal J G Raymond (“the judge”) who, in a decision promulgated on 28 September 2021, dismissed the appellant’s protection and human rights appeal against the decision of the Secretary of State for the Home Department (“the respondent” or “SSHD”) dated 6 July 2020 refusing the appellant’s protection and human rights claim.

2. In an 'error of law' decision promulgated on 1 April 2022 the Upper Tribunal (a panel consisting of Upper Tribunal Judge Blum and Deputy Upper Tribunal Judge Grimes) accepted a concession made by the respondent in her response to the grant of permission to appeal (pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008) that the judge's decision was legally erroneous because he failed to consider whether there was a risk to the appellant, based on his particular characteristics, including his mental health, if notionally removed to Kabul at the date of the judge's decision in September 2021. The judge failed to adequately consider the background evidence, limited though it was, following the Taliban's usurpation of power in August 2021.
3. The Upper Tribunal did not however find any material legal error in the judge's finding that the appellant was not a credible witness and that he fabricated his protection claim. the judge's factual findings were consequently preserved.
4. The Upper Tribunal considered it appropriate to remake the decision at a further hearing to determine whether the appellant would be at risk of ill treatment on his return to Kabul sufficient to either breach Article 3 ECHR or to entitle him to humanitarian protection.

### **The remaking hearing**

5. The appellant produced a further bundle of documents for the remaking hearing that included, inter alia, further statements from him, his 2<sup>nd</sup> cousin MH, and a friend AS, further medical evidence, and the Country Policy and Information Note ("CPIN") document "Afghanistan: Medical treatment and healthcare", of October 2021. At the hearing Ms Physsas provided the UNHCR Guidance Note on the International Protection Needs of People Fleeing Afghanistan dated February 2022, and a skeleton argument.
6. At the outset of the hearing Mr Tufan conceded that the appellant's appeal should be allowed and that he was entitled to refugee status. This was because of the evidence of the appellant's mental health and the consequential real risk that he would face if removed to Afghanistan because of his membership of a Particular Social Group ("PSG") based on the appellant's particular mental health concerns, in line with the reported decision of DH (Particular Social Group: Mental Health) Afghanistan [2020] UKUT 00223 (IAC) ("DH").
7. In light of the Presenting Officer's clear concession, which was rationally open to him based on the evidence before him, I indicated that I would allow the appeal and that I would issue a short decision.

## Discussion

8. Given the concession it is not necessary for me to give a detailed decision. In making his concession Mr Tufan acknowledged that, although the First-tier Tribunal judge rejected as incredible the appellant's account of events that caused him to leave Afghanistan, the judge did not dispute the diagnosis of Dr Latifi, Consultant Psychiatrist, in a report dated 5 March 2021, that the appellant suffered from depression and PTSD. The new medical evidence confirmed that the appellant had been seen by 'Harrow Talking Therapies' and that he had described having "fleeting thoughts of being better off dead." An assessment of the appellant indicated that he had "severe depression." As a result of this he had been referred to the secondary mental health team. The letter from 'Harrow Talking Therapies' indicated that the appellant had severe head and chest pain that made him "... want to jump off a bridge and smash his head into walls." His GP was asked to monitor his risk. The unchallenged further statements from MH and AS described the appellant as appearing "very lost and disturbed", that he went to bed at odd times and suffered nightmares, and that he was generally distant and not vocal. The appellant was described as living "in a bubble" and had low mood and low attention span.
9. Mr Tufan conceded that the appellant constituted a member of a PSG based on his mental health issues in line with DH. This was a concession open to him as representative of the respondent. Mr Tufan referred to the CPIN on medical treatment and healthcare in Afghanistan. At 3.2.1 there is a reference to a report from Medecins Sans Frontieres (MSF) and the ICFRC that Afghanistan's health system was 'at risk of collapse ', that it was understaffed, under-equipped and underfunded, and that the healthcare system, which was already fragile, had been left under greater strain. There was a reference at 3.2.6 to a BBC article noting the estimated number of doctors, nurses and midwives who had left the country, and an Al-Jazeera article at 3.2.10 talked about medication and medical supplies running out. At S-LTR.4.2.3 the CPIN references articles concerning the cost of medication, which was said to be make it difficult or impossible for many to afford. At 4.4.1 reference was made to a HRW report stating that mental health services were especially lacking and that there were critical gaps in the availability and quality of mental health services in Kabul and other cities. There was also a lack of trained mental health staff.
10. I am satisfied, based on a clear concession by the respondent, that the appellant is a member of a PSG in line with DH. It was conceded by the respondent that the appellant would be at risk if removed to Afghanistan on account of his mental health. In these circumstances I allow the appeal on protection and human rights grounds.

**Notice of Decision**

**The appeal is allowed on protection and human rights grounds.**

**Anonymity Direction**

*Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) The Tribunal has ORDERED that no one shall publish or reveal the name or address of NY who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of NY or of any member of NY's family in connection with these proceedings.*

***Any failure to comply with this direction could give rise to contempt of court proceedings.***

D.Blum

Signed

Date:

Upper Tribunal Judge Blum

23 June 2022