Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/06771/2011

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 5 January, 9 March, 29 June 2012, 5 March, 17 April and 4 June 2013	.....

Before

UPPER TRIBUNAL JUDGE GOLDSTEIN

Between

JA
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Heybroek, Counsel instructed by Messrs Kathala & Co Solicitors

For the Respondent: (For hearing on 05/01/12):
Mr P Nath, Home Office Presenting Officer
(For hearing on 09/03/12):
Mr E Tufan, Home Office Presenting Officer
(For hearings on 29/06/12, 05/03/13, 17/04/13 & 04/06/13):
Ms J Isherwood, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by the Appellant, a citizen of Afghanistan born on 24 April 1993, against the decision of the Respondent dated 14 December 2010 to refuse to vary the Appellant's leave to remain in the United

Kingdom and to refuse to him the grant of asylum in accordance with paragraph 334 of the Immigration Rules.

2. On 15 October 2008 the Appellant was granted limited leave to remain in the United Kingdom until 24 October 2010 on a discretionary basis for a reason not covered by the Immigration Rules.

3. In her Letter of Refusal dated 14 December 2010 the Secretary of State noted that the Appellant was an Afghan citizen born in Zahidabad, a village in Mohammed Agha Province in Logar District of Afghanistan, who had attended school at the age of 7 and then studied at the Hazrat Bilal Mosque until he completed the Quaran at the age of 10.

4. The Appellant had a brother, whom I shall call SA, who had joined Hizb-e-Islami when he was 8 or 9 years old. SA would travel back and forth between the Appellant's village and Kunar Province once a month or sometimes every two or three months.

5. It was the Appellant's account that the Afghan authorities discovered that his brother was working for Hizb-e-Islami two or three months after he joined and that in consequence his brother went into hiding with Hizb-e-Islami. The authorities went to the Appellant's family home and questioned his mother regarding his brother's whereabouts.

6. The Appellant claimed that at age 13 he joined Hizb-e-Islami on the advice of his brother and that over the next two years he would make trips to Kunar Province and assist Hizb-e-Islami by filling rifles with bullets, cooking meals for the group and acting as a lookout. He returned home to his mother after five or six days at a time. The journey took three to four hours in a vehicle.

7. When the Appellant was 14 the government approached his mother's house whilst he was out one day and enquired after him. She told them that she did not know her son's whereabouts and the officials told the Appellant's mother that she was to report her son to the district police officer when she saw him. The Appellant's mother told him of this visit on his return and that the government had discovered he was working for Hizb-e-Islami. She advised the Appellant to live with his brother in Kunar Province. The Appellant believed that someone informed the authorities that he had been working for Hizb-e-Islami.

8. The Appellant stayed with his brother within the mountainous area of Kunar Province for two months. He claimed to have witnessed dead bodies and injured people and he was given weapons training and ordered to fight by his commander.

9. The Appellant's brother decided that the Appellant had to leave Afghanistan because he was concerned for his safety.

10. The Appellant thus feared return to Afghanistan because he feared persecution from the Afghanistan authorities because of his past membership of Hizb-e-Islami and his brother's membership of the same organisation.

11. Since the Appellant's arrival in the United Kingdom on 7 January 2008 he had initially been supported by Croydon Social Services and at the time of the refusal letter he was described as "*currently living with a foster family in Upper Norwood*".

12. It was noted that during his time in the UK the Appellant had been studying and had made progress with his education as demonstrated by the numerous certificates as evidence of his many achievements enclosed in his application for further leave. In addition it was clear that he had participated and been involved in a number of sporting and social activities within the local community and had made a number of close friends. The Appellant had formed strong bonds with his current and previous foster carers.

13. It was the Appellant's account in support of his claim that he would continue to live in fear of his life if he was returned to Afghanistan. His father was killed by the Afghan authorities because he too was working with the Hizb-e-Islami. The Appellant also feared if not the Afghan Government, the Hizb-e-Islami, who would ask him to fight against the present government.

14. The Appellant claimed he was not in touch with his family members in Afghanistan and was unaware as to their present whereabouts.

15. The Appellant claimed that his brother had contacted his maternal uncle who arranged for an agent to take him to an unknown destination in Pakistan by car. He had no documents and encountered no checkpoints, nor did he experience any problems at the Afghan/Pakistani border. He left Pakistan from Islamabad Airport and travelled by air for eight or nine hours to the UK to an unknown airport arriving on 22 August 2008. He travelled with a family of four whom he met at the agent's house in Pakistan. A false passport was used that the agent carried for the Appellant and which bore the Appellant's picture and date of birth.

16. Upon arrival in the United Kingdom a friend of the Appellant's maternal uncle collected him and the Appellant claimed asylum on 29 August 2008. The Appellant was refused asylum and Humanitarian Protection on 15 August 2008 but was granted Discretionary Leave until 24 October 2010. The Appellant's subsequent application for an extension of stay in the United Kingdom was made on 13 October 2010 before his leave expired.

17. In her Letter of Refusal, the Secretary of State noted that the Appellant relied in essence on the details of his original claim for asylum that had been considered in October 2008 and refused for the reasons given in a

decision letter supplied at that time. It was considered the reasons then given were still valid and continue to be relied upon. The Appellant had failed to provide a credible, consistent and accurate account of the events that he claimed led to his departure from Afghanistan and it was thus not accepted that he was ever a member of Hizb-e-Islami or that he had ever been of interest to the Afghan authorities. It was therefore not accepted that he had fled Afghanistan to evade the Afghan authorities.

18. The Secretary of State in her letter, made reference to relevant background material and also considered the issue of internal relocation with reference to relevant case law that included the country guidance decisions in RQ (Afghan National Army – Hizb-i-Islami – risk) Afghanistan CG [2008] UKAIT 00013 and PM and Others (Afghanistan) CG [2007] UKIAT 00089. In that latter case the Tribunal found that internal relocation to Kabul in circumstances where an Appellant established a well-founded fear of persecution in his home area, was a reasonable expectation.

19. It was considered that the Appellant had demonstrated an ability to adapt to life in the United Kingdom and that there was no evidence to suggest he could not do so in his own country upon return.

20. In consequence the Secretary of State further concluded that the Appellant in his particular circumstances, failed to cross the high threshold warranted by Article 3 of the ECHR and failed to establish that he was in need of Humanitarian Protection.

21. In terms of Article 8 of the ECHR, more particularly as regards the private life the Appellant had established in the UK, it was noted that the Appellant had been here since August 2008 and had made many friends. He had submitted impressive documents that demonstrated in particular the educational progress that he had made but the fact remained that any private life the Appellant had established during his stay was in the full knowledge of his precarious immigration status. It was thus concluded that the Appellant's removal to Afghanistan would not breach the United Kingdom's obligations under Article 8.

22. Consideration was also given to the Appellant's particular circumstances under paragraph 395C of the Immigration Rules and whilst carefully considering all the Appellant's circumstances individually and cumulatively it was concluded for the reasons given that the Appellant's removal from the United Kingdom would be appropriate.

23. The Secretary of State issued a Supplementary Letter dated 17 March 2011 that specifically focussed on Article 8 ECHR issues raised by the Appellant. Consideration was given specifically to Section 55 of the Borders, Citizenship, and Immigration Act 2009 and to the need to make arrangements to safeguard and promote the welfare of children who are in the United Kingdom. In that regard the Secretary of State had noted the availability of education in Afghanistan and the effect of removal on the

Appellant. Further the Appellant would be able to keep safe and healthy in view of the facilities available in Afghanistan and the support network in place on his return and the age and length of time the Appellant had resided in the United Kingdom. All those factors had been balanced against the wider public interest of controlling immigration.

24. It was noted that the Appellant had no medical conditions and that he had benefited from education whilst in the UK and would be able to use the skills he had gained to seek employment or further his education. If the Appellant were to return to Afghanistan voluntarily then help was available to him from the International Organisation for Migration (IOM) to arrange the Appellant's education or employment opportunities if he so wished.

25. It was observed that when in Afghanistan, the Appellant lived with family members and his mother and that other family members continued to reside there. It was therefore considered that he had recent family relationships in Afghanistan.

26. The Appellant had only been living in the UK since August 2008 but had lived in Afghanistan for the majority of his life. Further in returning to Afghanistan he would be able to continue to enjoy his ethnic, religious, cultural and linguistic background and ensure his right to preserve his identity, including his nationality. For those reasons the Appellant's removal would not be in breach of the UK's obligations under Article 8 of the ECHR.

27. This is a case with a lengthy appeal history. Indeed following the decision to refuse to the Appellant the grant of asylum on 15 October 2008, the Appellant's appeal was heard before Immigration Judge Wyman at Hatton Cross on 7 January 2009, and dismissed in a determination promulgated on 29 January 2009, although it was noted that the Appellant continued to retain the grant of Discretionary Leave to remain until October 2010.

28. Following the further decision of the Secretary of State dated 14 December 2010 to refuse the Appellant a grant of asylum, the Appellant's appeal against that decision came before Immigration Judge Wellesley-Cole who sitting at Taylor House on 28 January 2011 allowed the appeal to the extent that it was sent back to the Secretary of State in relation to Section 55 of the 2009 Act for consideration. That decision of course prompted the Secretary of State's Supplementary Letter to which I have above referred.

29. Indeed it was in consequence of the Respondent's Supplementary Refusal Letter dated 17 March 2011 that the Appellant lodged a further appeal which was heard before Immigration Judge Davda who sitting at Taylor House on 28 July 2011 and in a determination promulgated on 22 August 2011, dismissed the Appellant's appeal on asylum, Humanitarian Protection and human rights grounds.

30. The Appellant successfully made an application for permission to appeal that decision that I indeed granted, having been persuaded that the Appellant's application demonstrated that the Immigration Judge had arguably made an error of law in failing to give adequate reasons for her findings on material matters. Further that the grounds raised arguable issues as to whether the judge was entitled in law to reach the conclusions that she did for the reasons given. The brevity of the Judge's determination was noted and I observed in granting permission, that whilst brevity might have its place in the writing of determinations, it should never be at the expense of clear and adequate reasoning.

31. Thus the appeal came before me on 5 January 2012 when Mr Nath for the Respondent told me at the outset of the hearing, that he accepted that the findings of the Immigration Judge were inadequately reasoned, noting for example that there was no cross-reference to background material or relevant case law or country guidance and no evaluation of the evidence of two of the witnesses who had given evidence before the Judge in support of the Appellant's appeal. I agreed for like reason and therefore set aside the Immigration Judge's determination and with the agreement of the parties directing that none of her findings would in the circumstances be preserved.

32. There were however further concerns, not least in the absence of any evidence before me as to whether the Secretary of State had acted on the decision of IJ Wellesley-Cole. The material simply was not before me at the time of that hearing nor within Mr Nath's Home Office file. It was agreed that in the circumstances the appropriate course was initially to re-list this matter For Mention Only before me. At the For Mention hearing on 9 March 2012 such matters of concern were clarified and I arranged for the appeal to proceed to a resumed substantive hearing before me.

33. At the resumed hearing on 5 March 2013, I was told by Ms Heybroek that what she described as two crucial witnesses, namely the Appellant's former foster parents, one of whom was a social worker, were unable to attend that day's hearing. It was considered that both witness's evidence were central to the Appellant's Article 8 appeal. The Appellant's former foster mother was giving professional evidence in proceedings elsewhere that day. It was agreed that as the evidence solely related to the Appellant's Article 8 appeal, there was no reason why I could not proceed to hear evidence in relation to the Appellant's asylum appeal where he would be the only witness. Regrettably in the course of the Appellant's evidence I was advised by the interpreter present, that he was required elsewhere in Birmingham that afternoon and could only stay until 3pm. In consequence there was common ground between myself and the parties that it would be foolhardy to further proceed with the Appellant's cross-examination in that Ms Isherwood had reached a particular point in the proceedings where it was appropriate to stop. In the circumstances I arranged for the matter to be re-listed before me on 17 April 2013.

34. At the restored hearing, I agreed to Ms Heybroek's request to hear the Appellant's witnesses first not least because one of them, whom I shall call Ms AF had brought her young children with her. I proceeded to hear Ms AF's evidence followed by that of the Appellant's witness, whom I shall call MT. The Appellant then resumed the giving of his evidence in relation to his asylum appeal. In the event this resulted in continued and lengthy cross-examination. It being late in the day, it was agreed the case would now be adjourned to 4 June 2013 and that at the resumed hearing the Appellant would give his evidence in terms of his Article 8 appeal. I reminded Ms Heybroek of my direction for her to file with the Tribunal and serve upon the Respondent, a translated copy of the Appellant's ID card and to endeavour to obtain a copy of a BBC on-line article concerning Faryadi Zardad, an Afghan warlord who was serving a sentence of imprisonment in the United Kingdom but who had provided a signed letter in support of the Appellant's appeal.

35. At the restored hearing on 4 June 2013 the Appellant concluded his evidence. I then heard the submissions of the parties' following upon which I reserved my determination.

The Appellant's Evidence

36. In oral evidence before me the Appellant adopted his previous statements dated 1 October 2010, 24 January 2011, 18 July 2011, 12 December 2011, and 13 June 2012. Although I have considered all of them with care, it will suffice if I summarise the salient features of those statements, the first of which on 17 December 2008 disputed the Secretary of State's conclusion in her initial letter of refusal that the Appellant was not an Afghan national. Indeed he proceeded to set out in detail the way of life of an Afghan. He described the area in which he lived in significant detail, the national dress, the type of clothing worn by Afghan men and women in the various seasons of the year and details of Afghan diet and eating habits. The Appellant then went into some detail as to the languages used in Afghanistan and in particular Kabul, he referred to the various tribes, even the national game for Afghanistan and its purpose.

37. The Appellant challenged the Secretary of State's conclusion that he did not serve with Hizb-e-Islami pointing out that most people from Logar Province were from Hizb-e-Islami. He described Hizb-e-Islami clothing and the name of his commander. He attached photographs, the originals of which he had already handed to the Secretary of State, in which the Appellant claimed to be depicted. He described his brother's role in the Hizb-e-Islami and even the name of his brother's commander. He described the clothing he used to wear and how he always had on his person a carry bag that contained bullets and grenades. He went into considerable detail about magazines and bullets and how they were fitted. He pointed out that Kalashnikovs were usually carried by Hizb-e-Islami members. The Appellant described his role in the organisation and other jobs that he carried out including helping with meals.

38. The Appellant confirmed that the photographs and Afghan identification card which he had provided were genuine and should be relied upon as evidence of his membership of Hizb-e-Islami and the fact that he was an Afghan national.

39. In the Appellant's second statement of 2008, the Appellant repeated his account as reflected in the Secretary of State's refusal letters. He provided full details of his parents' names and that of his brother and nephew. He claimed his father was a member of Hizb-e-Islami and killed by the government in 2002. His brother rejoined the Hizb-e-Islami group when the Appellant was 8 or 9 years old. His brother was a group commander. He was involved in fighting. He was essentially based in Kunar.

40. The Appellant explained how, when he was 13 years old, his brother convinced him to join the Hizb-e-Islami and how over the following two years he became an active member of the group and used to go and stay at Kunar for different periods of time in those years. He explained that during that time with the group he learned how to fill rifles with bullets and load them onto the barrel. He would cook meals for the group. He used to sit at the petrol stations and act as a lookout and when he was not needed by the group he returned home to his mother.

41. He explained how one day, on the way back from Kunar, he went to bring some groceries before arriving home and subsequently learned that "*government people came to my home looking for me and asked my mother where I was*". Upon returning home the Appellant's mother told him that he was in danger. She was concerned that he should leave straight away as these were the same people that had killed the Appellant's father. He was advised by his mother to go to his brother in Kunar where indeed he stayed for two months. Gradually he was also ordered to fight. It was at that time that the Appellant's brother decided that he should leave, that he was at risk of being killed and he did not want the Appellant to face the same danger that he was facing. A maternal uncle was contacted who made the arrangements with an agent to take the Appellant to Pakistan by car. The details of the Appellant's travel to the UK are set out in the Letter of Refusal.

42. The Appellant's subsequent statements relate, inter alia, to his educational achievements whilst in the United Kingdom. He started school in September 2008 and completed his GCSEs in Maths, Food Studies and Graphic Design. He had obtained many certificates. He was in particular awarded a certificate from the Mayor of Croydon. He was presently at Coulsdon College and studying a BTEC in Vocational Studies. He had already passed the first level with distinction. He had also completed the second year and was now in his third year. Once completed, he intended to seek to undergo a course with a view to achieving a National Diploma in IT. The Appellant described his activities with friends and his interests and

how he was currently living with a foster family in Upper Norwood, that being with Ms AF and her husband and her children. The Appellant explained how he was also taking A-level in Urdu. He repeated that he could not return to Afghanistan because he continued to have a fear for his life for the reasons already given. He insisted that he was not in touch with his family members in Afghanistan and was unaware of their present whereabouts. Finally he confirmed that during the Pakistani floods he had raised money in his local mosque in Croydon.

43. In his subsequent statements, the Appellant took further issue with aspects of the Secretary of State's most recent letter of refusal. He pointed out that he had been in the United Kingdom since August 2008 and had adapted to the lifestyle with the help of Social Services and his foster family, pointing out that without their support he would not have been able to start a new life in the UK or adapt to the culture here. He was scared to return to Afghanistan because he believed he would end up on the streets and be an easy target "*for anyone to take advantage of me*". The Appellant strongly believed that if returned to his country he would "*definitely be harmed and my life would be at risk. I would be targeted on my return to Afghanistan*".

44. Attached to the Appellant's statement of 12 December 2011, were letters from Faryadi Zardad and from a Mr MNB who was described as a senior Hizb-e-Islami operative but now a recognised Home Office interpreter. Both gave evidence in their letters that the Appellant's father was "*a very senior commander*" in the Hizb-e-Islami.

45. It is right to say that over a period of two hearing days, the Appellant was subjected to lengthy and close cross-examination.

46. The Appellant explained that the age difference between himself and his brother was about ten years. He was now aged 19 and his brother aged 30. There was a nephew now aged 12. At the time he left Afghanistan his mother and nephew were living in Logar Province which was about 30 to 45 minutes from Kabul by car and his brother was in Kunar Province which was three to four hours from Kabul by car. The Appellant had seen none of them since he left the country and there had been no further contact. He had made attempts to establish such contact through the Afghan Society and also through the Red Cross, the latter about four to five months earlier. He had contacted the Afghan Society in early 2009.

47. The Appellant explained that he was scared to make contact through the Red Cross sooner because if they had visited his area and found his family members or spoken to them, the other people in the village who were uneducated, would have thought that his family were working with foreigners and it might have created problems for them. The Afghan Society did not prove too helpful due to a lack of facilities but assured him that if they became aware of any information they would let him know.

48. The Appellant produced a letter from the British Red Cross dated 29 January 2013 that confirmed that their UK offices had accepted his Red Cross message and tracing enquiry for his mother, brother and nephew which had been forwarded to the International Committee of the Red Cross (ICRC). It was pointed out that it might be some time before they had something to report but the Red Cross would write to the Appellant every six months about the status of his case and that as soon as their enquiries were completed he would be contacted.

49. It was put to the Appellant that he could have sought help from his cousin in the United Kingdom to whom the Appellant had made reference in his statement of 18 July 2011 where he had described him as "*a father figure"*. The Appellant had explained how they had met by chance at a reception in December 2010 and had maintained contact ever since. The Appellant had a good relationship with his cousin's children with whom he often played.

50. The Appellant explained that although he respected him like a father:

> "… there is a difference between a real mother and a person born to a real mother but as a cousin he is not my real brother so there cannot be the same love and affection".

51. When asked why the Appellant had not asked his cousin to help trace his family, the Appellant explained that his cousin could not do anything about his own safety and could not visit Afghanistan. He was referred to a passage from the determination of IJ Davda. I reminded the parties that I had directed that none of her findings should be preserved but with their co-operation and agreement, I was able to isolate that part of the relevant paragraph that simply recorded evidence as opposed to a finding. It was agreed that this extract could be referred to and it is right that I should set it out below:

> "The Appellant's second paternal cousin (Mr BA) in his oral evidence said he met the Appellant by chance at a Duncan Lewis reception in December 2010. He and the Appellant are both from the same area. He has family in Afghanistan. They live half an hour's walk from the Appellant's family. His last contact with the Appellant's family was in 2002. He came to the United Kingdom in 2002 and has not returned to Afghanistan. He is now a British citizen. When asked to produce his passport, which had Pakistani entry stamps, only then he said he went to Pakistan this year where he stayed at his maternal uncle's house. His father, mother and sister came over from Afghanistan to meet him".

52. It was put to the Appellant that clearly his cousin had visited his own family in Afghanistan whom he met in Pakistan, further that it appeared that his cousin's family live only half an hour away from the Appellant's home in Afghanistan. The Appellant was asked why he had not requested his cousin to make appropriate enquiries as to his family's whereabouts. The Appellant responded that he had not so, because he understood that

his cousin had "*threats to his own life in Afghanistan but in fact I tried through the Afghan Society and the Red Cross*". The Appellant continued that he did not know that his cousin was visiting Pakistan. He had not been told of his cousin's planned visit.

53. The Appellant insisted that he had not had contact with his family since he left Afghanistan. His nephew would now be 12 and his mother 54. He repeated that his father had been killed. His father had been with Hizb-e-Islami:

> "… for a long time. I do not know how many years but he was promoted from a low level to a commander position".

54. The Appellant did not know at what age his father had joined the group but he had been told by his mother that his father was a senior commander in Hizb-e-Islami and had eventually been killed. He could not remember the exact date because he was a young child at the time but he remembered his father not least from photographs. He recalled his father would come to the family home from Kunar where his command was based.

55. The Appellant disputed that the only evidence that he had a father who was a commander in Hizb-e-Islami was that of his own and pointed to the letters from Mr Zardad and Mr MNB. The latter had told him that whilst happy to provide the letter he was a busy man and could not "*physically come himself*" and Mr Zardad was in prison having been convicted of serious terrorist offences for which he had received a sentence of twenty years. The Appellant had contacted both of these gentlemen asking if they knew his father and his position with Hizb-e-Islami and they were willing to provide the letters now produced.

56. The Appellant continued that:

> "Mr Zardad is popular with the entire Afghan community and Mr Bashart I found through solicitors because he writes expert's reports and is a prominent figure.
>
> I asked them do you know this person as I have my own ID card that shows the name of my father and Mr Zardad said he knows my father and my family at home."

57. The Appellant pointed out that his ID card bore the name of his father. He insisted that he retained his ID card before he joined the Hizb-e-Islami. He in fact sought to refer to his own interview record to further make the point. The Appellant had not known the exact date when he approached the authorities to get his ID card because at the time he "*was illiterate and young*", but he had joined the Hizb-e-Islami when he was 13 and had retained his ID card beforehand.

58. When asked if the Appellant knew how his father had died, he responded that his father had been abducted by the current government from his home and killed but he did know how his father was killed. He had not previously mentioned his father was abducted because he had not specifically been asked that question. He had simply been asked what had happened to his father and he had replied at interview that "*he was taken by the current government and killed*". The Appellant continued that his father was abducted from his home when he was in the house but asleep. He was taken at night. The Appellant would have been 8 or 9 years old at the time.

59. In the house at the time was himself, his parents, his brother and nephew (his brother's son). The house had a yard and a compound. It was medium sized with four rooms comprising, one bedroom for his parents and one for his brother and his wife. There was a guest room and an all-purpose room for cooking and then the Appellant's bedroom. He described there being a shower and toilet in the corner of the compound but they were separate and basic. It was a single storey house. All the houses were attached to each other. The Appellant's room was next to his parents' bedroom. He had not been disturbed when his father was abducted because:

> "As a child when you are sleeping you can't wake up or anything. It is different now. Now if I hear a small noise I wake up but it was different when I was a small child".

60. The Appellant was told of this event the following morning after he awoke. His mother was crying.

61. The Appellant explained that the Hizb-e-Islami could not come to the area as they had no power of influence there. They were only powerful in Kunar. The Appellant continued:

> "Two parties are enemies to each other and it is normal for them to abduct and kill each other's people".

62. The Appellant described how following his father's death the villagers carried out his funeral. Generally the villagers were scared of the government. The funeral had taken place in Logar. The Appellant explained:

> "The tradition is in our village when someone dies, they announce it on the loudspeaker from the mosque and then people hear the announcement and they come to the funeral".

63. It was noted that Mr MNB in his letter, had stated that the Appellant's father was a prominent active commander and that Mr MNB worked as a high-ranking media operator. It was put to the Appellant that given that his father held such high office as to why there were no announcements about his death in the newspapers. The Appellant responded if it had been published he would not have known about it as he was illiterate and

young at the time. He had however searched on the internet and found nothing.

64. MNB had given him the letter now produced and told him "*I am giving you this letter to prove what you asked me and if they have any further questions they can write me a letter*". The Appellant explained that when he was first refused by the Home Office he did not know MNB, but that at that particular appeal hearing it was accepted that he was a member of Hizb-e-Islami although no finding was made about his father. Subsequently he made these enquiries and was able to contact Mr Zardad and Mr MNB.

65. The Appellant continued:

> "My father was a big commander of Hizb-e-Islami but everyone knows the biggest commander is Gulbodin Heykmatyar – but the lower commanders were under my father's hand and he was getting orders from the top commanders.
>
> I am telling you that for the last four years my father was a big commander in Hizb-e-Islami and I provided you with proof from these two people. Please accept what I am saying to you. What else do you want?"

66. At the resumed hearing on 4 June 2013, the Appellant continued his lengthy cross-examination, more particularly following the production of a further copy of his ID card with a certified translation. In summary, the Appellant was challenged on his claim that he had obtained the card before joining Hizb-e-Islami, Ms Isherwood relied on the date shown on the card, that she maintained did not correspond with the Appellant's account.

67. The Appellant was subject to further detailed questioning as to the circumstances under which he joined Hizb-e-Islami in which he repeated that following his brother joining the organisation, his brother would return to the family home every so many months. When the Appellant finally joined Hizb-e-Islami he would see his brother on occasions because he was also based in Kunar. The Appellant's mother had looked after him whilst his brother was with Hizb-e-Islami. His brother's son, the Appellant's nephew, was 6 years old at the time.

68. The Appellant insisted his brother was a commander but essentially carried out the orders of his senior officers. It was put to the Appellant that if his brother could hide in Kunar why could not the Appellant rather than flee the country. The Appellant responded:

> "At that time there was a lot of killing and we had seen a lot of dead bodies and so my brother advised me to leave the country as it wasn't safe for me. He said 'don't worry about me but I just want you to be safe'".

69. In re-examination and with the agreement of the parties, the Appellant was asked to draw a sketch design of his house and where members of

the family slept. He was given a pen and paper for this purpose and I noted that without the slightest hesitation and with considerable animation, the Appellant began to confidently sketch the house providing details of and identifying the whereabouts of all the various rooms and to whom they belonged including even where the windows were located. Having presented the sketch he was subject to a series of searching questions to which he responded in some detail, that included the thickness of the walls, their composition, why they were made with a mixture of mud and straw and so on. He explained that because the walls were some two foot thick "*to protect the house from the winds in the winter*" he would not be able to hear his parents talking in their bedroom next door. The Appellant explained that he was a very heavy sleeper. Even at the present time, once asleep, only his alarm would wake him up to ensure he got to college on time.

70. The Appellant proceeded to give detailed evidence in support of his Article 8 claim, again the subject of lengthy cross-examination. In the course of this evidence, he explained that AF, with whom he lived, was like a mother to him and her husband like a father. He regarded their children as if they were his real siblings. He was treated like a normal member of the immediate family. He continued:

> "I call (AF) auntie. I have been living in the same house since 2009. I was 16 at the time and I am now 20. I call her auntie because we are very sweet with each other. That I talk in English shows how much she has helped me with English and English customs and culture and she helps me with my course work. I call (AF's) husband (RF).
>
> They have all treated me as if I was never fostered. They treat me like I am their own son. I look upon the children as if they were my brothers and sisters.
>
> I can see a bright future for myself. Four universities have already offered me places subject to passing my final exams and regularising my immigration status. They are Brighton, Middlesex, Greenwich and Metropolitan. I wish to undergo a course of computing/networking which is a three year course leading to a BSc(Hons) degree.
>
> Even if I am hopefully granted immigration status and attend one of these universities I shall continue to live with auntie and my family and will commute to college. Auntie helps me with English. They are all my family and I am very happy with them."

71. The Appellant repeated that he had had no contact with his mother and brother. When he left Afghanistan his mother was in Logar Province still in their village and his brother was in Kunar with the Hizb-e-Islami which was some three to four hours away by car.

72. In conclusion when asked the effect upon him if he was removed from this country and from AF and her family, he responded:

> "It would be horrendous and in Pakistan Afghanistan people would take advantage of me. I would be no one. I would be living on the streets and if I got back they are not going to leave me alone as they know I work for Hizb-e-Islami.
>
> I have already been separated from my own mum and if I am now to be separated from AF and family it will break my heart. God has given me someone who looks after me and given me the love that I used to have from my own parents so please I beg you do not separate me from them".

73. The Appellant continued that his removal would have a bad effect on AF's children, not least their eldest daughter. AF's father regularly came to the home and he called him "Grandad". He kept him company and made him tea and made his dinner and did whatever "Grandad" needed to make him happy.

74. When cross-examined, the Appellant clarified that he initially lived with another foster parent for six to seven months. He was then moved into the care of AF and her family. There came a point when the local authority stated they could no longer pay for AF's fostering services and he was temporarily moved from the home to a shared house with other boys. The Appellant explained:

> "I was only there for two weeks but missed (AF) and the family and I could not study or do anything because these boys were smoking and drinking and shouting. I did not sleep and then (AF) told me she wanted me back. There would be no charge. She would not take any money from the council. That was in the middle of 2011."

Evidence of AF

75. Mrs AF began by adopting her statements of 21 August 2011 and 13 July 2012, in which she stressed that the Appellant had been "*an honest and reliable person and he has always been very respectful to my immediate and extended family members*. *(JA's) personality is very calm and pleasant. I have never known him to raise his voice or have an angry tendency*". Ms AF fully supported JA's application for asylum as he was "*a good citizen who will be hardworking, law abiding, a positive role model and a pillar of the community*". The Appellant had come to her as a minor and she had been looking after him ever since. He had a close relationship with the family and had many friends amongst the local boys. He was well settled in the United Kingdom and in her opinion would not survive in Afghanistan. She was no longer a paid carer:

> "… but I love him and hence I have kept him in my house. I have three young children and he looks after them for me when I go out. He teaches them to read and write and often collects them from school and takes them to the park. He is providing invaluable support for me and my family".

76. In her oral evidence, Ms AF explained that when the Appellant first moved into her home in 2009 she only had one child, a daughter, but had since had twins in 2010. She also had an elderly father whom the Appellant was very caring towards. Ms AF stressed that the Appellant was regarded as a member of the family. She explained that she had three children and "*one more child is not much more to feed and it is a pleasure*".

77. Ms AF was a full-time social worker but often worked from home. Her husband was a delivery driver who worked evenings and therefore they alternated with child care. The Appellant was not responsible for this child care and so those arrangements would not be disrupted by his going back to Afghanistan but she stressed that he was part of her family. Her eldest daughter had always seen him as a big brother. Ms AF had a large extended family of nine brothers and sisters and an elderly father, "*I have got a large family and we feel that (JA) is a part of this".* She continued:

> "If he has to go back and live in Kabul there is so much uncertainty within the country; media would state that the country is fine to go back to. However, I feel that if he was to go back his life would be at risk".

78. When asked what it would mean to her and for her family if the Appellant was removed Ms AF replied:

> "It would be as though I have lost a son. It would be like a death in the family because he is part of us. We have accepted him forever.
>
> It would be devastating and I think he could have a breakdown and I do think (though I have got no proof) that he could take his life, it would be that much of a worry to him.
>
> Last year we lost our mum and she suffered greatly at the loss of her grandmother and in the event of (JA) no longer being with us it would be seen as another death in the family.
>
> If he was granted asylum, I would categorically state that he would be a law abiding citizen and would continue his education to become a professional and to work hard and to earn an honest living and he has integrated well into British society. There would be no issues with offending behaviour. He would remain positive and the stability of his religion would maintain his dignity and values."

79. Ms AF explained that she had been a qualified full-time social worker for fifteen years. She had been employed by the National Fostering Agency for the last ten years and prior to that had worked for Barnado's for seven and a half years and before that she was a Youth and Community Worker for five years.

80. When cross-examined she explained that when she first came across the Appellant he could not speak any English and the family had to communicate with him as best they could. "*No way could he be described then as a well-educated person fluent in English*".

81. She recalled that the Appellant had one cousin that she had met whom the Appellant saw on a regular basis. That cousin was not in a position to have the Appellant live with him.

82. When asked if she had spoken to the Appellant about family relatives in Afghanistan, she responded:

> "It is painful when he speaks about family members and I do not encourage it and I know a lot of his family are deceased".

83. Ms AF was not aware that the Appellant's cousin had visited Pakistan. It was not her role to discuss with the Appellant the tracing of his family members in Pakistan. She added however:

> "During meetings with his social worker at which I have been present, that question has come up and there is a lot of fear with young boys from Afghanistan using organisations like the Red Cross. All of my three boys in placement did not want to use that service due to fear of their lives. They see it as something that would come back on themselves. (JA) has said to me that he does not know the whereabouts of his family members".

84. It was put to the witness that it followed that from 2009 to 2013 her evidence was that the Appellant had done nothing to trace his family members to which Ms AF replied that his family were dead or missing, that is what she had been told by the Appellant and "*I do not want to go there with him and I do not want to stress him*".

85. Ms AF explained that when the subject matter of his immediate family was brought up that the Appellant started to cry and get upset and emotional. She continued:

> "It is a very distressing period for him and I say to him 'let's see what happens in the future'. I have left it because I just want to work toward his future and give him hope."

86. Ms AF explained that she sought no rent or payment from the Appellant. He was treated just like any other family member in the household. She stressed that she regarded the Appellant "*as my own son and I hope my son grows up just like him*". Ms AF had not considered the alternative for the Appellant but if he was allowed to stay then she intended to continue to support him. If he subsequently decided to get a place of his own such as an offer of accommodation with the local authority, she would help him with furniture and cost but otherwise she was more than happy that he should continue to stay with her and her family. She repeated that the Appellant would "*always be regarded and treated as an extended member of my family*".

Evidence of MT

87. Ms MT adopted her statements of 5 January and 8 June 2011 and 18 June 2012 but she stressed that the Appellant had moved on in the last nine months and there was more to report on him. She referred to her letter of 5 January 2011 confirming that she had taught English to the Appellant at Coulsdon Sixth Form College. His first language was Pashtun. She had been teaching him since September 2009 and meeting him once a week for between an hour and an hour and a half. He was a very good student, extremely polite and respectful, diligent and cheerful. He had a 100% attendance record and engaged fully in every session and was very serious about his studies. His study skills had developed well over the last few years. He listened and read very carefully and this resulted in him having good powers of comprehension. He worked hard in developing his writing skills in order to improve his course work and assignments.

88. Ms MT stressed that speaking English was the Appellant's greatest strength since he was a "*natural communicator*". He had focussed well on improving his pronunciation and conversational flow in English and had focussed on expanding his regular vocabulary. Ms MT regarded him as "*a great asset in a group of students and brings value to teaching sessions. He is extremely friendly and supportive of his fellow students and I believe that he has acted as a peer group member of college. He is popular and engaging and is highly principled*".

89. Ms MT was sure that the Appellant would make the best of any educational opportunities that were offered to him. He had already successfully combined the responsibilities of a part-time job with his studies and had shown a very mature attitude towards his future.

90. Apart from the Appellant's educational achievements, Ms MT wished him well in the future and hoped he would be allowed to remain in the United Kingdom which was now his home. She pointed out that:

> "The stress he has experienced over the last six months during which his residency status had been in question has been extremely hard for him to bear and he has shown exemplary strength of character in enduring the strain and not allowing it to undermine his spirit or his efforts to work and study".

91. Ms MT said that in the last three years the Appellant had been a very active member of the British Afghan Association in Croydon where he had been a mentor of other Afghan men towards their integration. He had been happy to absorb himself in his Afghan traditions and he was a very good Afghani dancer.

92. Ms MT was aware the Appellant received an award from the Mayor of Croydon for his service – a combination of being a good student, a good citizen and a good representative of the Afghan community. However she had not seen the Appellant since September 2012 on a regular basis because of his timetable and hers which did not make it possible but the Appellant came to see her every week at the college just for a chat. He

was having two or three lessons in Functional Skills English so that he could attain Level 2 AQA which was necessary for him to apply for a university place. She was aware that he had already been provided with offers of places in a number of universities.

Documentary Evidence

93. There are spread between the Tribunal bundle and the bundles most helpfully prepared by the Appellant's solicitors in support of his appeal, a large volume of documents that include certificates and character references which, apart from anything else, demonstrate the educational progress that the Appellant has made and his contribution to the local community. None of those documents were called into question by the Respondent.

94. In terms of additional evidence that the Appellant has put forward in support of his claims as to his father and brother's activities with Hizb-e-Islami, there are the following:

Statement of BA

95. This is an unsigned, undated statement but one that was clearly given in support of the Appellant's appeal before the First-tier Tribunal. I am aware that Mr BA, who is the Appellant's cousin and a British citizen, also gave oral evidence before the First-tier Tribunal. The witness statement confirms that he and the Appellant are second cousins and confirms the Appellant's account that they met by coincidence at a Duncan Lewis reception in December 2010. BA explains he had an appointment on the same day as the Appellant as he had to collect his son's passport. The Appellant recognised him and they quickly established as to how they were related.

96. Mr BA confirmed that he left Afghanistan in 2002 and came to the UK because his brother used to work for Hizb-e-Islami. He pointed out that his brother was working very closely with the Appellant's father as they both worked for the Hizb-e-Islami.

97. Mr BA's statement proceeds to name JA's father whom he describes as "*a well-known commander in Logar Province, Mohammed Agha District*". The statement continues:

> "(JA's) father always had eight to ten bodyguards with him and he had many men under his command. I confirm that I am aware of this because we are relatives in the same area and (JA's) father was known in surrounding villages by everyone as he had been involved in many fighting against Jamiat-e-Islami who is the leading party in the present Government.
>
> I can confirm the above as a result of his father's activities many members of Jamiat-e-Islami had suffered and the family members of those who had suffered or the people who are still alive must be in power with the

> Government. As a result (JA) would encounter problems if returned back to Afghanistan as they would want to seek revenge from the family members.
>
> I can confirm that (JA's) life would be in danger if returned back to Afghanistan.
>
> I can confirm that anyone who is against the Government whether they are low level or not they will always remain enemies of the Government and on return they will be viewed as enemies and will be killed.
>
> Since I have been aware of (JA's) presence in the UK, we meet every once a week or sometimes once in two weeks. I always invite him to my house for my dinner. I have six children and (JA) is very friendly and lovable with them all. We consider (JA) as a family member and my family will be very sad to see him go."

98. It is right to point out that BA's evidence and I J Davda's findings in respect of it, appear in her determination, that was of course set aside for error of law and with none of her findings preserved. I have therefore considered Mr BA's statement afresh as part of my credibility assessment as to the truth of the Appellant's accounts and claims and of course have taken into account that though Mr BA was not present to give evidence in support of the Appellant before me, he did provide a statement before the First-tier Tribunal and had given oral evidence in support of the Appellant on that occasion.

Letter of Zardad Faryadi with Certified Translation dated 13 December 2011

99. Before setting out the contents of the letter, it would be as well if I refer to a BBC News on-line article that I received from Ms Heybroek that describes Mr Zardad as an Afghan warlord found guilty of torture and hostage taking in his home country for which he was sentenced to twenty years' imprisonment. His conviction was described as a landmark case at the Old Bailey and was thought to be the first time that torture offences committed in one country were prosecuted in another. The judge recommended that Zardad be deported after serving his sentence. It appears that the evidence was that Zardad controlled a series of military checkpoints between Kabul and Jalalabad and was "*in a position of real power*". It was found that he was personally involved in acts of torture and hostage taking as well as authorising his men. It was reported that one of the key legal challenges of the case had been to show that although Zardad did not necessarily administer torture himself he was still responsible through the men he controlled at his checkpoints. An Old Bailey jury found him guilty after a lengthy retrial, of numerous instances of hostage taking between 1992 and 1996.

100. The translated version of Mr Zardad's letter reads as follows:

> "Dear Solicitor,

I know (JA's) father (HMA) very well. I am from Logar Province and (HMA) is the resident of Logar Province Mohammad Agha District as well and he is the commander Hizb-e-Islami. (HMA) from my tribe and when there were fighting between Hizb-e-Islami and Ahmad Shah Masood, (JA's) father also fought against the Northern Alliance. At present I am in jail but I have heard from the people that the whole power of Kabul is with Northern Alliances now. It's bad luck of our people that they are taking revenge of each other. Allah may give relief from these bad habits to our people and I wish they all lived together in one country. These were my information that I wrote. I am ill please do not bother me again.

With regards.

Zardad Faryadi."

Letter from MNB dated 28 November 2011

101. The letter displays MNB's address and then states as follows:

"To whom it may concern

This is to certify that (HMA) resident of Mohammad Agha District in Logar Province of Afghanistan was one of the prominent and outstandingly active commanders of Hizb-e-Islami, Afghanistan. He was well-known and famous for his active role in the field and as well his loyal association with his party. I would like to mention that I used to work for Hizb-e-Islami as a high-ranking media operator during the period of 1985-1997.

Yours faithfully".

Expert Report of Peter Marsden, MBE dated 2 December 2008

102. This report is some five years old but I am told that it was commissioned by those representing the Appellant in support of his earlier appeal. Mr Marsden's qualifications are set out in some considerable detail in the first two pages of his report. He has worked full-time as Information Co-ordinator for the British Agencies Afghanistan Group and has also been a Research and Information Advisor to the British Agencies Afghanistan Group. He formerly managed a team of three staff to support the British aid effort in Afghanistan. He has also produced articles in a monthly review giving an analysis of political, economic, humanitarian, cultural environment details on Afghanistan. He has written extensively on Afghanistan including a book published in 1998 entitled "The Taliban War Religion and the New Order in Afghanistan". He is also the author of numerous studies, book chapters, papers and articles on all aspects of the situation. I am therefore satisfied that Mr Marsden is well-qualified to comment on country conditions in Afghanistan, but, as I say and stress, the report before me is some five years old. Nonetheless, I would agree with Ms Heybroek who submitted that the report still contained useful and

more specific information in relation to the risks that the Appellant might be subjected to on return to Afghanistan in his particular circumstances.

Photographs

103. It was accepted by Ms Isherwood that the Appellant did in the course of his interviews with the Respondent, hand over the originals of photographs that he claimed depicted him with fellow members of Hizb-e-Islami. Ms Isherwood told me that regrettably she could not locate the originals from her file. I must therefore rely solely upon the copies of those photographs that are before me.

104. I note in that regard that reference is made to the original "colour" photographs produced by the Appellant within the Secretary of State's letter of refusal of 15 October 2008. It was noted that the Appellant claimed that it showed him and other people from Hizb-e-Islami and that two of those photographs depicted his brother. It was noted that the photographs were not dated, although the Appellant claimed they were taken some time in 2006. The Appellant claimed that those photographs were taken with his consent but it was considered that there was no way of identifying any of the people in the pictures nor was there any way of identifying in which country they were taken. I consider that all those observations were perfectly valid and proper.

105. The Appellant in evidence claimed that he was depicted in each of those photographs. He was invited to circle on each picture as to exactly where he was depicted. However some of the pictures are taken at a distance and it is very difficult to be sure in relation to them if they are in fact pictures of the Appellant. I am certainly no expert in matters of identification of this nature and I feel that it would not in the circumstances be appropriate for me to express a view as to whether those photographs depict the Appellant as claimed. I have concluded that in such circumstances the photographs do not assist me and I have therefore placed no reliance upon them.

106. It has not been suggested by the Secretary of State that the letters from Zardad and Mr MNB in support of the Appellant's appeal are not genuine but I was invited by Ms Isherwood to place little reliance upon them.

The Appellant's ID Card with Translation

107. This is of course an important document that the Appellant has produced to reject the contention of the Respondent that the Appellant is not as claimed an Afghan national. For reasons to which I will refer later, I am satisfied that the Appellant is as claimed an Afghan national and as such I find that the ID card to be a document upon which I can rely.

108. In so doing, I am mindful of the guidance within the starred decision of the Tribunal in Tanveer Ahmed* [2002] UKIAT 00439 as to the approach the

decision maker should take to the reliability of documents. It would be an error for that decision not to be followed and considered all those very many cases, indeed the very considerable majority, where the issue is not whether the document in question is forged or authentic but whether it is reliable or not. This distinction is vital. The document produced might be on the right paper, even with the right stamp or a signature but might be unreliable because of the way in which it was, for example procured.

Legal Framework

109. In terms of the Appellant's asylum and human rights (Articles 2 and 3 ECHR) appeals, the burden of proof is upon the Appellant to a standard defined as a reasonable degree of likelihood. The question is answered by looking at the evidence in the round and assessed at the time of the hearing of the appeal. It follows that in considering the Appellant's particular circumstances, I have to consider to the requisite standard of proof, whether on return to Afghanistan, the Appellant has established a well-founded fear of persecution under the Refugee Convention and whether on return there are substantial grounds for believing that he would face a real risk of suffering serious harm within the meaning of 339C of the Immigration Rules and whether there are substantial grounds for believing that on return the Appellant would face a real risk to his life (Article 2) or being exposed to treatment contrary to Article 3 of the ECHR.

110. In reaching my conclusions as to whether the Appellant will be at real risk on return, I am further mindful of the provisions of paragraph 339K of the Immigration Rules that deals with the approach to past persecution and paragraph 339O relating to internal relocation.

111. The standard of proof in determining the likelihood of a risk to the Appellant's protected rights under Articles 2 and 3 is the same low standard as it is for persecution for a Convention reason.

The Determination of Immigration Judge Wyman promulgated 29 January 2009

112. It is a feature of the appeal history of this particular case, that whilst the subsequent determination of IJ Davda has been set aside for error of law, the earlier determination of Immigration Judge Wyman of 2009 continues to stand.

113. It was common ground between myself and the parties' that the findings of IJ Wyman in his determination must form the starting point of my consideration of the present appeal. I do so mindful of the guidance within

the starred decision of the Tribunal in Devaseelan [2002] UKIAT 00702. The most relevant points of that guidance were for the present purposes as follows:

> *"(1) The first Adjudicator's determination should always be the starting point ...*
>
> *(6) If before the second Adjudicator the Appellant relies on facts that are not materially different from those put to the first Adjudicator and proposes to support the claim by what is in essence the same evidence as that available to the Appellant at that time, the second Adjudicator should regard the issues as settled by the first Adjudicator's determination and make his findings in line with that determination rather than allowing the matter to be re-litigated ...".*

114. The Tribunal in Mubu and Others (Immigration Appeals – Res Judicata) Zimbabwe [2012] UKUT 00398 (IAC) has held inter alia as follows:

> "The guidelines set out in Devaseelan [2002] UKIAT 00702; are always to be applied to the determination of a factual issue, the dispute as to which has already been the subject of judicial determination in an appeal against an earlier immigration decision involving the same parties. This is so whether the finding in the earlier determination was in favour, or against the Secretary of State".

Assessment

The Appellant's Nationality

115. I have had absolutely no difficulty in concluding that the Appellant is an Afghan national from the village of Zaidabad in Logar Province as he has throughout claimed.

116. Indeed and with great respect to Ms Isherwood, I was somewhat surprised to find that at the outset of the hearing on 4 January 2013 in the course of her further cross-examination of the Appellant over his identity card, she clearly began to take great issue with his claimed nationality and in her closing submissions invited me to find that the ID document upon which he relied, was not reliable and that the Appellant was not from Afghanistan.

117. I say this because as I earlier recorded at the outset of the hearing before me on 17 April 2013, Ms Isherwood told me that although she did not have permission to concede on the Secretary of State's original stance that the Appellant was not a citizen of Afghanistan she could however tell me that her submissions were *"going to be very brief on the point"*.

118. It is right to say to say that in the Secretary of State's original Letter of Refusal dated 15 October 2008, the Appellant' claim to be an Afghan national was rejected and indeed on that basis it was also rejected that he was ever a member of Hizb-e-Islami and that he had ever been of interest

to the Afghan authorities and that he had fled Afghanistan for Pakistan to evade the Afghan authorities.

119. However, even in that letter, it was recognised that the Appellant was able to state the basic aims of Hizb-e-Islami and correctly name their leader. Further that he correctly stated the colours of the Afghan flag and six provinces in Afghanistan.

120. A reading of the Letter of Refusal 14 December 2010 as a whole demonstrates that the Secretary of State's reasoning was no longer predicated on a dispute as to the Appellant's true nationality at its core, but on the premise that the Appellant had failed to provide a credible consistent and accurate account of the events he claimed had led him to depart from Afghanistan and that it was for those reasons, that he was not at risk in Afghanistan from the Afghan authorities.

121. More particularly and as recognised by the parties and mindful of Devaseelan principles, it was clear that at paragraph 49 of IJ Wyman's determination, he accepted that the Appellant was an Afghan national from Logar Province indeed he had this to say:

> "49. Taking all these matters into account, namely the Appellant's Afghan identity card, his evidence from his statement and the comments of Dr Marsden, I find that the Appellant is an Afghan national. I accept that he comes from the village of Zaid Abad in Logar Province".

122. That finding as the parties have recognised, must form my starting point in terms of my consideration as to the true nationality of the Appellant. Indeed it is only if fresh evidence is produced to suggest to the contrary that I can properly revisit this issue. No such fresh evidence has been produced. The ID card now before me, was considered with care and examined by IJ Wyman together with the other relevant evidence to which he referred upon which he reached his positive conclusion on the issue of the Appellant's nationality.

123. I nonetheless allowed Ms Isherwood to pursue her cross-examination of the Appellant in relation to the ID card, mindful that a certified translation of the card had not been before IJ Wyman. It was Ms Isherwood's submission that when looking at other references to the name of the Appellant's father, there appeared to be two full names and a surname. Only the names (M A) appeared on the Appellant's ID card. Further it was dated 2007, when according to the Appellant in 2007 he was working for Hizb-e-Islami whilst maintaining that he had obtained the ID card in 2007 with no problems. She maintained that this simply could not have happened if as he claimed in 2007, he was fighting with the Hizb-e-Islami. At a previous hearing, the Appellant gave evidence that he obtained the ID card before he joined the Hizb-e-Islami but Ms Isherwood submitted he could not possibly have obtained it in these circumstances, as the card showed it was issued in 2007.

124. I am not persuaded by this contention. It is apparent to me that it has always been the Appellant's evidence that he was aged 13 when he joined Hizb-e-Islami. His ID card was issued in March 2007. At that time, the Appellant was aged 13 in that his birthday was not until April 2007. I find therefore that there was no contradiction in his claiming that he joined Hizb-e-Islami when he was aged 13 but obtained the ID card in March 2007 before he joined. I am also mindful that the Appellant in evidence could not recall exactly when in the course of his 13th year he joined Hizb-i-Islami but he was consistent that the card was obtained beforehand. He was not 14 when he got the card.

125. My finding in this regard has been further reinforced by the confident manner in which the Appellant gave evidence before me as to the situation of his village, its distance from Kunar and from Kabul and more particularly the manner in which when asked he immediately set about drawing a diagram of his house and its relation to other houses within the compound where he lived. The drawing of the sketch plan and the oral evidence that he gave in support of it was could but only have been given by someone who in that regard was telling the truth about who he was and where he lived. I was particularly struck by the comfortable and confident manner of his evidence in this regard and indeed in response to a request that took him by surprise, in terms of drawing a sketch plan of his home, that could but only be consistent with a witness of truth.

126. This can no better be exemplified than by my setting out below my record of the evidence he gave on this matter;

> "The house was built around the yard. I left in 2008. I was 15.
>
> The house was in a yard surrounded by four mud walls – a sort of compound. Our house was in a terrace of three houses. It was the middle one. Our village is Zahidabad. There are lots of families living there it's a big village with a population of between 1,000 and 1,500 people.
>
> The nearest town is called Poli-Kandari – 20 minutes walk away. The nearest city is Kabul about 35 to 40 minutes by car.
>
> Q. How many doors to your room.
>
> A. Only one door. There is at the right hand corner of each room a door.
>
> The night my father was taken I was sleeping in the middle room. I was next door to my parents' room.
>
> The walls are made of mud. It is a poor village but they are made very thick. In winter there is lots of snow and wind and so the houses have to be strongly built.
>
> Each wall is about to 1 to 1½ foot thick.

The walls around the yard are even stronger – much thicker about 2 foot thick to protect the compound from the winds.

Mud and straw is mixed together for solidity. It is largely brought down from the surrounding mountains.

As to the windows (here he indicates his sketch plan) with the exception of two of them they look out on to the compound. They are all small windows set in wooden frames.

Pashtun, my language is also spoken in Pakistan and some in India".

127. Taking all above matters into account cumulatively and mindful not least of the lower standard of proof, I have had no difficulty in concluding that the Appellant is whom he claims and is a national of Afghanistan.

IJ Wyman's Determination

128. I have already referred to his unequivocal finding that the Appellant was an Afghan national. But it is apparent to me that over paragraphs 52 to 54 of the Judge's determination, he also accepted that the Appellant had low-level involvement with Hizb-e-Islami:

"50. The next key issue is whether or not the Appellant was a low level member of Hizb-e-Islami. The Appellant's evidence was that his father was a commander in the Hizb-e-Islami and died when he was approximately 8 or 9 years old. He has also stated his brother (SA) is heavily involved with Hizb-e-Islami and has been an active member since his father died approximately eight years ago.

51. There appears to be some contradictory information as to who is recruited to Hizb-e-Islami. The COIR Report stated that many of the recruits to Hizb-e-Islami are well-educated; however, other documents such as the report of Dr Marsden state the Hizb-e-Islami recruits are often from family members.

52. I accept the Appellant's evidence that it was his brother who recruited him into the Hizb-e-Islami. In such a rural and underdeveloped society such as Afghanistan, it is easy to understand that family links will be important in recruiting members to these organisations. This is confirmed in the report of Dr Marsden who stated that it was common practice for various mujahideen and militia groups in Afghanistan to use the services of boys aged around 12-14 to play a support role in relation to their operation.

53. The Appellant explained in his interview that his responsibilities included cooking food, guard duties and putting bullets into rifles. The Appellant has never stated he was involved as a fighter for Hizb-e-Islami. The Appellant also stated that after approximately five days, he would then return to his mother's house.

54. I accept that the Appellant did have low level with Hizb-e-Islami from the age of approximately 13 for a period of two years".

129. I also see that at paragraph 56, IJ Wyman found the Appellant's evidence as to the circumstances that caused him to go into hiding *"rather vague and confusing"*. He did not accept it. He could not accept the Appellant's evidence that his brother was so concerned for his safety that he arranged for his maternal uncle to get him out of Afghanistan and send him to England. IJ Wyman observed the Appellant had not explained why his brother felt that his life was worth more than his own. I also note that the IJ did not find the photographs the Appellant produced, added anything to the claim and of course that is a finding that corresponds with my own (see above).

130. It is apparent that IJ Wyman did not accept that the Appellant could not return to his village this was essentially on the basis that the Appellant had stated that it was his brother who had been involved in Hizb-e-Islami and had been living in the mountains for the previous seven to eight years since the death of their father. IJ Wyman concluded that his brother therefore would be able to speak to the other Hizb-e-Islami members and explain that he was he who sent his brother to England if in fact that information was not already known.

131. With all due respect to the Learned Judge, what in such circumstances is surprising, is that he felt the need to consider whether the Appellant could safely relocate elsewhere in Afghanistan having concluded that he had failed to establish a well-founded of persecution in his home town. Nonetheless the Judge did consider that the Appellant would be safe from the government authorities if he returned to an area outside his home province and found that the Appellant could not be relocated to a rural area outside of his province. In that regard he relied on the country guidance decision in RQ [2008] CG UKAIT 00013 that stated that internal relocation outside Kabul was unlikely to provide a sufficiency of protection as the areas outside Kabul remained under the control of local warlords and the population was suspicious of strangers. This was a point also raised by the expert Dr Marsden in his report.

132. IJ Wyman considered whether or not the Appellant could be internally relocated to Kabul and he concluded that whilst he fully accepted the detailed knowledge of the expert, he preferred the evidence set out in the county guidance cases. He considered that the Appellant was a relatively young man with very limited knowledge and experience of Hizb-e-Islami. In his own evidence he was not a fighter but was more involved with making food and on guard duty he would thus have very limited information to provide to the authorities if he was arrested and questioned.

133. I make the point that I am required to consider whether the Appellant would be at future risk if returned to Afghanistan based on the evidence as it stands as at the date of my determination and not as at the date of the promulgation of IJ Wyman's determination some four and a half years ago.

134. The evidence before me of course includes; a letter from Zardad Faryadi; the Appellant's correspondence with the British Red Cross and; the further evidence of the Appellant before me and that of his two witnesses. I have of course, also had the benefit of the translated version of the Appellant's ID card as well as recent country background material not least as contained in the Country of Origin Information Report (COIR) of 15 March 2013, together with the case law guidance of the Court of Appeal in KA (Afghanistan) [2012] EWCA Civ 1014 and EU (Afghanistan) [2013] EWCA Civ 32 as well as other relevant and related case law all of which I have carefully considered against the backdrop of the Appellant' particular circumstances as I have found them.

The Appellant's Credibility

135. I have had regard as my starting point, to the findings of IJ Wyman that include his positive findings that the Appellant is an Afghan national (a finding which I have further endorsed) and that he was, as claimed, a low level member of Hizb-e-Islami and recruited by his older brother.

136. It was suggested to me that IJ Wyman made no finding as to whether the Appellant's brother was involved in Hizb-e-Islami or indeed their father. However it is apparent to me that given IJ Wyman's finding that the Appellant was recruited into the Hizb-e-Islami by his older brother, it must in all logic follow, that the Learned Judge must have also been satisfied that the Appellant's brother was also a member of that organisation, although it is fair to say that he made no finding as to the position that the Appellant's brother held with Hizb-e-Islami.

137. I have of course assessed the credibility of the Appellant's account in the context of my consideration of the evidence, both oral and documentary, in its totality

138. I have had the benefit of seeing and hearing the Appellant give his evidence over two days and at some length much of which was taken up in his responses to close and detailed cross-examination on the part of a highly experienced Presenting Officer. I was struck by the confident manner in which the Appellant gave his evidence throughout. I did not detect the slightest attempt to prevaricate. I had the clear impression of a person who was anxious to be as helpful as he could in his responses to the many questions put to him. On the rare occasions when he did not understand the question he always asked if it could be repeated and upon such clarification the question met with a full response. These are not the actions of someone who is inventing a story to support his claim but that which one would expect from a witness of truth.

139. My careful consideration of his evidence demonstrates an unshakeable consistency within his account that runs like a thread from his interview records through to his statements and finally his detailed and lengthy evidence before me. I do not therefore share Ms Isherwood's submission

that his evidence as a whole was extremely vague or that his responses to difficult questions was constantly met with the response that he was "uneducated". Indeed a consideration of his evidence shows that his reference to being uneducated solely related to questions put to him about events that took place in his village in Afghanistan at a time when he was a child. Indeed the evidence shows that when he arrived in this country he was relatively uneducated and was unfamiliar with life in a foreign country and could not speak English, a situation which has since dramatically changed.

140. Ms Isherwood also maintained that the Appellant gave "generally bland answers" to questions put to him regarding the Appellant's brother's activities. I do not agree. Indeed as the Appellant constantly made clear, he could only speak of his brother's activities from the vantage point of what he understood to be those activities in the sense that he was aware that his brother was a senior officer in Hizb-e-Islami and undertaking amongst other things fighting activities in relation to which he too was following the orders of senior officers. It was not surprising that he could not go into any greater specific detail.

141. My impression and evaluation as to the quality of the Appellant's evidence has been reinforced upon my consideration of the evidence of Ms AF, formerly the Appellant's foster mother who since the fostering period ended has continued to have the Appellant living in her home as part of her family without seeking payment from him or indeed from Camden Social Services. She no longer considers herself the Appellant's foster mother but his de facto mother. She was clear that she regarded the Appellant as if he were her real son. Ms AF gave heartfelt evidence before me and I found her to be both a qualified and most impressive witness. I had no reason to doubt anything that she told me. I therefore accept what she says about the Appellant's character describing him as "honest and reliable – very respectful – calm and pleasant – (and a) positive role and pillar of the community".

142. I was also impressed with the evidence of MT who was been tutoring the Appellant at Couldson Sixth Form College who described him amongst other things as "extremely polite and respectful, diligent and cheerful … a great asset … extremely friendly and supportive of his fellow students … popular and engaging … highly principled". Ms MT also remarked as to the way in which the Appellant "shown exemplary strength of character in enduring the strain and not allowing it to undermine his spirits or his efforts to work and study".

143. Those character references and those of others in the Appellant's local community here in the United Kingdom, who have provided their letters in terms of the Appellant's character and in support of his appeal together presents a comprehensive profile of an upstanding young man and one who qualities would not lead him to tell lies whether before the Tribunal or

in his normal daily life. They shed a positive light on his character that has assisted me greatly in assessing the credibility of his account and claims.

144. My positive findings of credibility have been of assistance to me in determining the weight and reliability that I can attach to the evidence that the Appellant produced in support of his claim that his father was formerly a senior and leading commander in the Hizb-e-Islami and who was subsequently killed.

145. It has been held by this Tribunal (see ST (Corroboration – Kasolo) Ethiopia [2004] UKIAT 00119 that inter alia an appeal must be based on the evidence produced but the weight attached to oral evidence might be affected by a failure to produce other evidence in support. It was further held in TK (Burundi) [2009] EWCA Civ 40 that where there were circumstances in which evidence corroborating an Appellant's evidence was easily obtainable, then the lack of such evidence would affect the assessment of the Appellant's credibility. It follows that where in assessing an Appellant's credibility it is observed that the Appellant is relying on facts where there is no supporting evidence where there should be and no credible account for its absence then a decision maker would commit no error of law when relying in part on those facts for rejecting an Appellant's account.

146. This is not however, the situation in the present case. Indeed quite the reverse. The Appellant has explained the circumstances under which through his solicitors he made contact with Zardad Faryadi currently serving a twenty year prison sentence in the United Kingdom and obtained from him a letter in which he unequivocally confirmed that the Appellant's father was someone that Mr Faryadi knew very well. He too was from Logar Province and he could confirm that the Appellant's father was a commander in Hizb-e-Islami and indeed was from his tribe. I accept that the logistics would have in any event, prevented Mr Faryadi from attending the hearing to give oral evidence in support of the Appellant's appeal and no doubt in the circumstances why he ended his letter by saying that he was unwell and did not wish to be further troubled. That of course is not the only letter in support of this aspect of the Appellant's evidence that the Appellant has produced because he has also put forward a letter from Mr MNB of Mohammad Agha District in Logar Province stating that the Appellant's father was *"one of the prominent and outstandingly active commanders of Hizb-e-Islami in Afghanistan … (who) was well-known and famous for his active role in the field as well as his loyal association with his party."* Whilst mindful that Mr MNB's credentials have not been specifically verified he does claim in his letter that he used to work for the organisation *"as a high ranking media operator during the period of 1985 to 1997".*

147. I find no reason why these two gentlemen should provide such letters in support of the Appellant's appeal in circumstances where there is no evidence to suggest that either of them has in any way any further

connection with the Appellant other than the knowledge of his father and his father's former activities. The weight that I attach to their evidence, has taken account of the fact that neither person has attended the hearing of the Appellant's appeal where in giving oral evidence, the veracity of their claims could be better tested. Nonetheless, I find that given my positive findings in terms of the Appellant's credibility, I can in such circumstances attach weight to these letters that have served to reinforce my conclusion that the Appellant's father was as claimed, a high ranking commander in Hizb-e-Islami who was killed in action.

148. There is no direct evidence as to the rank that the Appellant's brother held but as I have earlier pointed out, it is clear that IJ Wyman found that the brother was serving in that organisation and again given my consideration of the evidence in its totality and my positive credibility findings in relation to the Appellant, I find that I can accept not least to the lower standard of proof, that he was an officer in that organisation as the Appellant has claimed.

149. This leads me to the key issue of this appeal, namely whether in those circumstances the Appellant has established that he would be at future real risk of persecution were he now to be returned to Afghanistan.

Future Risk

150. I have borne in mind the guidance of the Court of Appeal not least in KA Afghanistan and EU (Afghanistan).

151. In considering that guidance in the context of the present case, it is apparent that a failure by the Secretary of State to discharge her duty to endeavour to trace family members demonstrates that in that regard she has not acted in accordance with the law.

152. I pause there because as submitted by Ms Isherwood many years passed before the Appellant took the trouble to contact the British Red Cross asking them to endeavour to trace the whereabouts of his mother, brother and nephew. Ms Isherwood identified that failure as indicative of the Appellant's lack of credibility. I do not share that view. Indeed I prefer the explanation given by the Appellant that he feared earlier contacting the Red Cross, because he was worried that any enquiries they made on the ground, in particular his village, would place his family members in difficulties and embarrassment and it might be misconceived that such enquiries suggested that his family were working hand in glove with the Afghan authorities. That claim was indeed borne out by the evidence of AF who told me that during meetings with the Appellant's social worker at which she was present, the question had come up and it emerged that there was a lot of fear with young boys from Afghanistan using organisations like the Red Cross. Indeed AF continued that all three boys who had been placed with her for fostering did not want to use that service

due to fear of their lives. She explained *"they see it as something that would come back on themselves"*.

153. Despite the Secretary of State's failure to trace as required, the fact remains that the onus remains on the Appellant to establish a proper foundation for the grant of relief, and in a given case, the lack of evidence from the Respondent concerning the availability of family support of the Appellant neither establishes nor reinforces any of the grounds that the Appellant might put forward in terms of his case for protection.

154. I am also mindful that in EU, Sir Stanley Burnton who gave the leading judgment pointed out inter alia, that whilst breaches of the duty of the Secretary of State in addressing a claim might lead to an independent justification for leave to remain in which the paradigm was the Article 8 claim of an asylum seeker whose claim had not been expeditiously determined, that to grant leave to remain to someone who had no risk on return, whose Convention rights would not be infringed by his return and who had no other independent claim to remain here, was to use the power to grant leave to remain for a purpose other than that for which it was conferred. His Lordship observed that unaccompanied children who arrived in this country from Afghanistan had done so as a result of someone, presumably their families, paying for their fare and/or for a so-called agent to arrange their journey to this country. The cost incurred by the family would have been considerable, relative to the wealth of an average Afghan family as the motivation for their incurring that cost might be that their child faced risk if he or she remained with them in Afghanistan or it might simply be they believe their child would have a better life in this country. Indeed Ms Isherwood in her closing submissions relied heavily on his Lordship's observation in maintaining that the Appellant had simply come here for economic betterment and to further his education and that the Appellant's family would be disappointed if he in those circumstances, were now to be returned to them.

155. However in the context of my finding in the present case, I accept that the Appellant has lost all contact with his mother, brother and nephew despite his recent efforts and earlier efforts indeed through the Afghan Society in London and that he has no knowledge of their present whereabouts. I have also made it clear, that on my findings, the Appellant did not simply leave Afghanistan with the help of his maternal uncle in order to achieve economic betterment in this country, but out of fear for his life and safety given that the authorities had recently been to the family home seeking the Appellant's whereabouts having learned that he was involved with Hizb-e-Islami.

156. I see no reason to doubt his claim that his elder brother with whom he hid for several months thereafter, was, as one might expect from an elder brother, more concerned to ensure the safety and welfare of his younger brother above his own safety. It was after all the Appellant's brother who indeed and not least on the findings of IJ Wyman, who recruited the

Appellant to Hizb-e-Islami and no doubt in consequence of events that had since transpired, now felt particularly responsible for him.

157. In AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163 (IAC) it was held inter alia that despite a rise in the number of civilian deaths and causalities and an expansion of the geographical scope of the armed conflict in Afghanistan, the level of indiscriminate violence in that country taken as a whole was not at such a high level as to mean that, within the meaning of Article 15(c) of the Qualification Directive a civilian, solely by being present in the country, faced a real risk that threatened his life or person. In the context of the present case I have found that the Appellant cannot be classified as an ordinary civilian.

158. In PM and Others (Kabul – Hizb-e-Islami) Afghanistan CG [2007] UKAIT 00089 the Tribunal held in respect of the ability to internally relocate to Kabul that if Appellants showed that they had a well-founded fear of their home area it was reasonable to expect them to live in Kabul, that was not *"an entirely lawless place"*. There were houses to rent at a price and work despite a fairly high level of unemployment. There was no satisfactory evidence to suggest that it would have been unreasonable for the three Appellants in that particular case, to live there or that they would be unable to lead other than a relatively normal life. However the Appellant in the present case is aged 19. In DS (Afghanistan) [2011] EWCA Civ 305 Lloyd LJ referred to what he called "the eighteenth birthday point" where in considering the duty to endeavour to trace, he commented on the contention that it did not endure beyond the date when an Applicant reached that age. His Lordship continued "It cannot be the case that the assessment of risk on return is subject to such a bright-line rule." He questioned whether a membership of a particular social group ceased on the day of a person's 18th birthday and continued:

> "It is not easy to see that risks of the relevant kind to who as a child would continue until the eve of their birthday would cease at once the next day".

159. His Lordship continued that given the kinds of risk in issue including the forced recruitment or the sexual exploitation of vulnerable young males, persecution was not respectful of birthdays and that apparent or assumed age was more important than chronological age.

160. That is the context in which I have considered the safety of this Appellant in terms of his relocation to Kabul given my finding that the Appellant was and is clearly at real risk in his home town. These are factors that I cannot possibly ignore.

161. In RQ (Afghan National Army - Hizb-e-Islami – risk) Afghanistan CG [2008] UKAIT 00013 it was held that unless there were particular reasons, it would not be unduly harsh to expect an Appellant with no individual risk factors to relocate to Kabul and assist in the rebuilding of his country. However on my findings, the Appellant does not meet that profile, in that I have found that this is an Appellant who has individual risk factors and that there are

therefore particular reasons why it would be unduly harsh to expect him to relocate to Kabul. I find this is not a case where internal relocation to Kabul would be reasonably available to the Appellant in his particular circumstances.

162. My conclusion in that regard has been further reinforced by Ms Heybroek's observation that his tribal family name would in any event identify the Appellant as a member of one of the tribes involved and commonly known to be involved in Hizib-e-Islami. Further he would have to obtain government documents even in Kabul in order to live there. He would need an ID card. Given that I accept that when the Appellant fled Afghanistan he was wanted by the authorities this would place the Appellant in almost insuperable difficulties in obtaining such an ID card to enable him to expect to have a reasonable life in Kabul without risk of discovery by the Afghani authorities.

163. I find that that future risk to the Appellant in his particular circumstances has been further compounded by my consideration of the background country material before me.

164. In that regard I have paid particular attention to the COIR of 15 March 2013. Reference is made to insurgents having remained focused on infiltrating routes from the south-eastern provinces towards Kabul, Kunar (where the Hizb-e-Islami forces are based) and Logar (the Appellant's province) and there is reference to an increase in security incidents between 1 May and 31 July compared to the same period in 2011. There is reference to armed clashes and improvised explosive devices constituting the vast majority of events.

165. The report refers to the UNAMA Mid-Year Report of 2012 which describes the situation of civilians in regard to anti-government elements who are said to have been responsible for 80% of civilian causalities, killing 882 civilians and injuring 1,593 others during the first six months of 2012. UNAMA has reiterated its concern for the continued use of indiscriminate tactics by Anti-Government Elements and the toll such methods exact on civilians.

166. There is reference to the US State Department Report of 2011 that talks of *"Official impunity and lack of accountability (being) pervasive"* and of crimes committed by the NDS and ANP officials including torture and abuse. There is also reference to a September Human Rights Watch Report linking the Afghan Local Police (ALP) and armed militia to extensive human rights abuses citing in June that the ALP allegedly detained two boys overnight, beat them and hammered nails into one boy's feet while he was in custody.

167. The report makes reference to the grey area within certain elements of Hizb-e-Isalmi whereby some of the more moderate members are within the current Afghan government whilst others continue their anti-

government activities and indeed some have aligned themselves with elements of the Taliban.

168. The picture that is painted is one where even today, the Afghan authorities continue to perceive supporters and members of Hizb-e-Islami as acting against the government and a threat to the government's authority and the country's security.

169. For all of the above reasons, I have concluded that not least to the lower standard of proof, the Appellant has established that if he were now to be returned to Afghanistan, he would be at real risk of persecution in Refugee Convention terms by reason of his political opinions imputed or otherwise. It is further apparent to me for the above reasons, that not only would the Appellant be at such risk in his home town but also in Kabul to which he would be returned.

170. In light of my finding, it follows that the Appellant has established there are substantial reasons for believing that his return to Afghanistan would further place the United Kingdom in breach of its obligations under Articles 2 and 3 of the ECHR.

171. Having established that the Appellant upon return to Afghanistan would be at real risk, it must inevitably follow, that in terms of Article 8 of the ECHR, the Appellant's removal would amount to a disproportionate interference with his private and family life rights, such as to place the United Kingdom in breach of its obligations under the ECHR. For the sake of completeness I would add that on the evidence before me in that regard, that I have above assessed, I am satisfied that the relationship that the Appellant enjoys with his de facto mother and her family clearly goes significantly beyond the normal emotional ties.

Conclusions

172. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

173. I set aside the decision.

174. I remake the decision in the appeal by allowing it.

175. For the avoidance of doubt, an anonymity order has been made under r. 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the Appellant or any member of his family.

Signed Date 11 June 2013

Upper Tribunal Judge Goldstein