

Afghan Refugees and Protection Claims 11 March 2021

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INTRODUCTION

Afghan protection claims in light of

AS (Safety of Kabul) Afghanistan CG [2020] UKUT 00130(IAC) and

DH (Particular Social Group: Mental Health) Afghanistan [2020] UKUT 00223 (IAC)



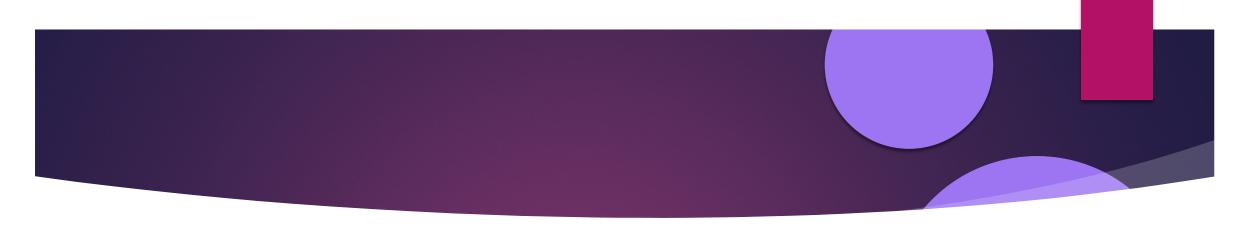
Headnote (i):

Risk on return to Kabul from the Taliban

(i) A person who is of lower-level interest for the Taliban (i.e. not a senior government or security services official, or a spy) is not at real risk of persecution from the Taliban in Kabul.



- Refers to risk from Taliban only, not to risk from other state or non-state actors
- Doesn't address directly risk to minorities, eg. Hazara
- Although other areas of Afghanistan are considered, no firm findings as to risk outside Kabul.



Headnote (ii):

Risk of serious harm in Kabul

(ii) There is widespread and persistent conflict-related violence in Kabul. However, the proportion of the population affected by indiscriminate violence is small and not at a level where a returnee, even one with no family or other network and who has no experience living in Kabul, would face a serious and individual threat to their life or © Copyright Goldsmith Chambers 2021

Deirson by reason of the population affected by indiscriminate violence is small and not at a level where a returnee, even one with no family or other network and who has no experience living in Kabul, would face a serious and individual threat to their life or persistent by reason of the persistent by reason of the persistent by the persistent persisten



- Does not find that the Art. 15(c) threshold is met as the risk of death or injury was "small" (although recognised that someone economically active would be at higher risk)
- Security overall:
- Targetted violence is widespread, as is violent crime
- Lack of a Tazkera will render someone more likely to harassment from the authorities –
 Tazkeras have to be obtained from the home region
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- Risk of ill-treatment under Art. 3 not specifically determined



Headnote (iii):

Reasonableness of internal relocation to Kabul

(iii) Having regard to the security and humanitarian situation in Kabul as well as the difficulties faced by the population living there (primarily the urban poor but also IDPs and other returnees, which are not dissimilar to the conditions faced throughout many other parts of Afghanistan) it will not, in general, be unreasonable or unduly harsh for a single add throughout to relocate to Kabul even if he does not have any bistorimer: the contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

Headnote (iv):

Reasonableness of internal relocation to Kabul

(iv) However, the particular circumstances of an individual applicant must be taken into account in the context of conditions in the place of relocation, including a person's age, nature and quality of support network/connections with Kabul/Afghanistan, their physical and mental health, and their language, education and vocational skills when determining whether a person falls within the general position set out above. Given the Disclaimer: the contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel. I limited options for employment, capability to undertake manual work may be relevant.



- Does not adopt UNHCR Eligibility Guidelines
- Did not agree with the UNHCR position that relocation was "generally not available"



Key point when preparing protection claim

• "252....in all cases an individualised case-by-case assessment is required, taking into account an individual's personal circumstances including factors such as his age, health, disability, languages spoken, educational and professional background, length of time outside of Afghanistan, connections to and experience of Kabul and family situation and relationships."

Headnote (v):

Reasonableness of internal relocation to Kabul

(v) A person with a support network or specific connections in Kabul is likely to be in a more advantageous position on return, which may counter a particular vulnerability of an individual on return. A person without a network may be able to develop one following return....(cont.)



Headnote (v):

Reasonableness of internal relocation to Kabul

(...cont) A person's familiarity with the cultural and societal norms of Afghanistan (which may be affected by the age at which he left the country and his length of absence) will be relevant to whether, and if so how quickly and successfully, he will be able to build a network.



- Mental Health
- Frequent issue, particularly with UASC
- Addressed in some detail at [43] of AS (Safety in Kabul)
- People with serious mental health problems can now be considered as members of a Particular Social Group in some circumstances - DH (Particular Social Group: Mental Health) Afghanistan [2020] UKUT 00223 (IAC)

"82. Dr Ahmad cited a World Health Organisation estimate in June 2019 that one in five people in post-conflict settings have depression, anxiety disorder, post-traumatic stress disorder, bipolar disorder or schizophrenia...

"83...She stated that public healthcare is of poor quality and medication is frequently counterfeit. She referred to attacks on medical staff and security concerns affecting access to healthcare in Afghanistan. She commented on there being inadequate psychiatric services and only one mental health hospital in Afghanistan, which is located in Kabul and has only 60 beds for in-patients and 40 in a separate facility for drug addicts. Dr Ahmad expressed the view that in Afghanistan in the conditions are stigmatised and socially estracised."

DH (Particular Social Group: Mental health) Afghanistan [2020] UKUT 00223(IAC) – Key Paragraphs:

"41. Of importance is the terminology used. The phrase 'mental disability' now commonly used in this area of work is taken to encompass both mental ill health, learning disabilities/ developmental disorders/ neurodiverse conditions, and brain damage, but there are fundamental differences between these conditions and they should not be confused. There is also a range of mental health conditions, e.g. depression / anxiety, post-traumatic stress syndrome, obsessive compulsive disorder, personality disorders, eating disorders, schizophrenia, bipolar disorder. Other mental impairments or neurodiverse conditions include autism, learnings disabilities, and 'specific learning difficulties' such as dyslexia."

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DH (Particular Social Group: Mental health) Afghanistan [2020] UKUT 00223(IAC) – Key Paragraphs:

"42. Similarly, the degree of disability in each individual's case will vary enormously and only in a small number of cases will it mean there is lack of mental capacity or behavioural traits that may expose that person to a real risk of harm as a result of their illness in their home state. That requires a fact specific assessment."

"43. If an appellant is claiming to belong to a PSG based upon their mental health there must be sufficient cogent evidence to enable a clear finding to be made that such a person is suffering from serious mental illness. I use the term 'serious mental illness' as there are a number of person to the control of the contr

function without any chairs outernal indicators or risk factors, as noted above."

DH (Particular Social Group: Mental health) Afghanistan [2020] UKUT 00223(IAC) – Key Paragraphs:

"44. 'Serious mental illness' includes diagnoses which typically involve psychosis (losing touch with reality or experiencing delusions) or high levels of care, and which may require hospital treatment, the most common of which are schizophrenia and bipolar disorder (or manic depression). It is a fact sensitive question in every case and the identification of the PSG as 'those suffering serious mental illness' was not in dispute before me."

"45. It is also not in dispute that the assessment must be made at the date of the decision or, on appeal, at the date of the hearing..."

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Contact Details and Acknowledgments

- Any Questions?
- ▶ Thank you!

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Thanks to Kezia Tobin for her wonderful technical support

Further reading: Bandegani, A., (2020) "New Kabul Country Guidance: individualised assessment of relocation required", Free Movement, 11 May 2020, (available from https://www.freemovement.org.uk/kabul-country-quidance-2020/)

