



Upper Tribunal

(Immigration and Asylum Chamber)

HK and others (minors – indiscriminate violence – forced recruitment by Taliban – contact with family members) Afghanistan CG

[2010] UKUT 378 (IAC)

THE IMMIGRATION ACTS

Heard at Field House

Determination Promulgated

On 15 July 2010

Before

MR JUSTICE BLAKE, PRESIDENT

SENIOR IMMIGRATION JUDGE WARD

Between

HK

NS

MM

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation :

For the Appellant: Mr Bedford of Counsel instructed by Sultan Lloyd, Solicitors

For the Respondent: Mr Gulvin, Senior Home Office Presenting Officer

1. Children are not disproportionately affected by the problems and conflict currently being experienced in Afghanistan. Roadside blasts, air-strikes, crossfire, suicide attacks and other war-related incidents do not impact more upon children than upon adult civilians.
2. While forcible recruitment by the Taliban cannot be discounted as a risk, particularly in areas of high militant activity or militant control, evidence is required to show that it is a real risk for the particular child concerned and not a mere possibility.
3. Where a child has close relatives in Afghanistan who have assisted him in leaving the country, any assertion that such family members are uncontactable or are unable to meet the child in Kabul and care for him on return, should be supported by credible evidence of efforts to contact those family members and their inability to meet and care for the child in the event of return.

DETERMINATION AND REASONS

History of the appeals

1.

The appellants are three Afghan children. Each has discretionary leave to remain granted in accordance with the Respondent's policy on unaccompanied child asylum seekers for another two years at least. They were refused asylum and humanitarian protection on 6 May 2009, 8 May 2009 and 21 August 2009 respectively. Each appealed to the Asylum and Immigration Tribunal ("AIT") and each had his appeal dismissed.

2.

The first appellant's appeal was heard by Immigration Judge Obhi on 3 July 2009. The Immigration Judge found that that appellant was not at risk of being taken by the Taliban and further found that he had a surrogate family in the form of his uncle and aunt, and that if returned to Afghanistan it was unlikely that his uncle would refuse to care for him. The Immigration Judge also looked at the situation with regard to humanitarian protection but found that there was no evidence of any individual threat to this appellant which was any greater than that which the vast majority of citizens in Afghanistan faced.

3.

With regard to the second appellant, his appeal was heard by Immigration Judge Buchanan on 12 October 2009. The immigration judge found that the appellant was not at specific risk of being abducted or exploited by the Taliban and found that there was no reason why he could not continue to live with his mother and paternal uncle if he were to be returned. The Immigration Judge also found that this appellant had not demonstrated any specific individual threat to him that would not be encountered by other young Afghans of his age.

4.

The appeal of the third appellant was heard by Immigration Judge Deavin on 14 July 2009. In a very brief determination the judge found that the appellant lived in a village in north-east Afghanistan and that there was no sound evidence of any problems encountered with the Taliban or of any forced conscription. The Immigration Judge did not consider the question of humanitarian protection.

5.

Each appellant sought a reconsideration order which was granted by a senior immigration judge. Following the demise of the AIT, and pursuant to the provisions of the Transfer of Functions of the Asylum and Immigration Tribunal Order 2010, these three appeals have now become appeals to the Upper Tribunal.

The issues

6.

At the beginning of the hearing we invited the representatives to clarify what they saw as the principal issues in these three appeals. Mr Bedford defined them as follows – i) whether they were entitled to humanitarian protection under Article 15(c) of the Qualification Directive; ii) whether the boys were at risk of forced recruitment by the Taliban and iii) whether they would face a real risk of ill treatment as unaccompanied children if returned to Kabul.

Submissions

7.

Each of the representatives made submissions which we do not propose to set out in full here but rather we provide a summary. Mr Bedford dealt firstly with Article 15(c). He referred to the case of *GS* (Article 15(c): indiscriminate violence) Afghanistan CG [2009] UKAIT 00044 (“*GS*”) and submitted that matters had moved on since that case and that the situation was worse. He submitted that some people, on account of their vulnerability, needed only to show a lower level of indiscriminate violence in order to bring them within the provisions of Article 15(c). He submitted that unaccompanied children were more vulnerable to forced labour or sexual exploitation in Kabul and therefore would be within the parameters of Article 15(c). He made reference to the expert report of Dr Giustozzi which had been produced in evidence for the Tribunal and also to the UNAMA Report of January 2010 which showed that at least 5978 civilians were killed and injured in 2009, the highest number of civilian casualties recorded since the fall of the Taliban regime in 2001. A total of 2412 civilian deaths were recorded between 1 January and 31 December 2009, and this figure represented an increase of 14% on the civilian deaths recorded in 2008. He further submitted that there was likely to be an under-reporting of these figures and he referred to various pieces of the country specific evidence in support of this submission. He cited parts of that report to show that women and children, and those who were vulnerable, face particular disadvantages in the context of problems associated with armed conflict. Children had been affected as a result of attacks including air strikes, rocket attacks, IEDs and suicide attacks. There were several cases throughout the year of children being used to carry out suicide attacks or plant explosives. He also referred to figures cited in the April 2010 Country of Origin Report showing that about 1050 children died in suicide attacks, roadside blasts, air strikes and in the crossfire between Taliban insurgents and pro-government Afghan and foreign forces in the period between January and December 2009. Mr Bedford made various other references to the background evidence which we will not set out in full here but which are fully recorded in his detailed and very helpful skeleton argument.

8.

As regards the risk of recruitment by the Taliban, he referred to various extracts from the Country of Origin Report of February 2009 and a more recent one of April 2010. The Child Soldiers Global Report 2008, referred to in that report, stated that there were anecdotal reports of under 18s serving in the armed forces. The children were used as suicide bombers by anti-government elements and there was forcible and voluntary recruitment by the Taliban of children in southern provinces and in parts of Pakistan. The Child Soldiers Report of 2004 noted UNICEF reports in mid-2003 that boys aged between 14 and 18 continue to be involved. Some joined voluntarily but others were coerced under threat of death or injury.

9.

Turning lastly to the matter of the risk for unaccompanied children in Kabul, he noted that the AIT had held in *LQ* (age: immutable characteristic) Afghanistan [2008] UKAIT 00005 (“*LQ*”) that Afghan children are a particular social group for the purposes of the Geneva Convention. He referred to the words of Jackson LJ in *ZK (Afghanistan) v SSHD* [2010] EWCA Civ 749 at paragraph 25 and 26, with whom the other two members of the Court agreed. It was held that paragraph 24.40 of the 2008 Country of Origin Report citing a UNHCR paper of May 2006 was a sufficient basis of finding that a child without family in Kabul would be exposed to a risk of severe harm. He submitted that unaccompanied and separated children represented one of the most vulnerable groups in Afghanistan in terms of potential risks and weakness of social and legal protection. In his skeleton argument he also cited various extracts from the background material which we do not set out here but which we have noted and taken into consideration. In answer to a question from the Tribunal he submitted that

the question for the Tribunal to ask itself was whether there was a real risk that each of these children would not have protection upon return to Afghanistan.

10.

At the beginning of his submissions, the Tribunal indicated to Mr Gulvin that they did not need to hear him on the subject of Article 15(c) of the Qualification Directive. He therefore commenced his submissions by noting that in all three cases the refusal letters had given details of how the appellants might be able to contact their relatives in Afghanistan. The appellants had all been represented throughout the proceedings and contact with their relatives back home had been an issue from the beginning. Each of the appellants had been provided with information to enable them to make contact with their families but there was no evidence that any had done so. It was his submission that none of these children could be regarded as unaccompanied children on return to Kabul as they each had relatives and they had not shown that those relatives would not be able to come to meet them and accompany them. There was therefore no reason to believe that those relatives would not be willing to assist them.

11.

Turning to the question of recruitment by the Taliban, Mr Gulvin acknowledged that there was some anecdotal evidence in the background material but at best it raised only a possibility of forced recruitment. There was no sufficient evidence to show that boys of this age were exposed to any more than a mere possibility, and certainly that these three boys did not face a real risk of such recruitment. There simply was not the evidence to support such an assertion.

12.

At the end of submissions the Tribunal reserved its decision, which decision we now give together with our reasons.

Material error of law

13.

We are satisfied that a material error of law has been demonstrated in each of these determinations. In the case of the first appellant, Master HK, we are satisfied that in the light of subsequent jurisprudence, and through no fault of his own, the Immigration Judge failed properly to consider the issue of humanitarian protection in line with appropriate country guidance as provided in GS , and in the European Court of Justice case of Elgafaji (Case C-465/07) [2009] 1 WLR 2100, 17 February 2009 (“ Elgafaji ”) . In the case of the other appellants the respective judges failed to address humanitarian protection at all.

14.

We note the following extract from the judgment of the European Court in Elgafaji:

“31. ...it is appropriate to compare the three types of 'serious harm' defined in Article 15 of the Directive, which constitute the qualification for subsidiary protection, where, in accordance with Article 2(e) of the Directive, substantial grounds have been shown for believing that the applicant faces 'a real risk of [such] harm' if returned to the relevant country.

32. In that regard, it must be noted that the terms 'death penalty', 'execution' and 'torture or inhuman or degrading treatment or punishment of an applicant in the country of origin', used in Article 15(a) and (b) of the Directive, cover situations in which the applicant for subsidiary protection is specifically exposed to the risk of a particular type of harm.

33. By contrast, the harm defined in Article 15(c) of the Directive as consisting of a 'serious and individual threat to [the applicant's] life or person' covers a more general risk of harm.

34. Reference is made, more generally, to a 'threat ... to a civilian's life or person' rather than to specific acts of violence. Furthermore, that threat is inherent in a general situation of 'international or internal armed conflict'. Lastly, the violence in question which gives rise to that threat is described as 'indiscriminate', a term which implies that it may extend to people irrespective of their personal circumstances.

35. In that context, the word 'individual' must be understood as covering harm to civilians irrespective of their identity, where the degree of indiscriminate violence characterising the armed conflict taking place assessed by the competent national authorities before which an application for subsidiary protection is made, or by the courts of a Member State to which a decision refusing such an application is referred, reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to the serious threat referred in Article 15(c) of the Directive.

36. That interpretation, which is likely to ensure that Article 15(c) of the Directive has its own field of application, is not invalidated by the wording of recital 26 in the preamble to the Directive, according to which '[r]isks to which a population of a country or a section of the population is generally exposed do normally not create in themselves an individual threat which would qualify as serious harm'.

37. While that recital implies that the objective finding alone of a risk linked to the general situation in a country is not, as a rule, sufficient to establish that the conditions set out in Article 15(c) of the Directive have been met in respect of a specific person, its wording nevertheless allows by the use of the word 'normally' for the possibility of an exceptional situation which would be characterised by such a high degree of risk that substantial grounds would be shown for believing that that person would be subject individually to the risk in question.

38. The exceptional nature of that situation is also confirmed by the fact that the relevant protection is subsidiary, and by the broad logic of Article 15 of the Directive, as the harm defined in paragraphs (a) and (b) of that article requires a clear degree of individualisation. While it is admittedly true that collective factors play a significant role in the application of Article 15(c) of the Directive, in that the person concerned belongs, like other people, to a circle of potential victims of indiscriminate violence in situations of international or internal armed conflict, it is nevertheless the case that that provision must be subject to a coherent interpretation in relation to the other two situations referred to in Article 15 of the Directive and must, therefore, be interpreted by close reference to that individualisation.

39. In that regard, the more the applicant is able to show that he is specifically affected by reason of factors particular to his personal circumstances, the lower the level of indiscriminate violence required for him to be eligible for subsidiary protection.

40. Moreover, it should be added that, in the individual assessment of an application for subsidiary protection, under Article 4(3) of the Directive, the following may be taken into account:

the geographical scope of the situation of indiscriminate violence and the actual destination of the applicant in the event that he is returned to the relevant country, as is clear from Article 8(1) of the Directive, and

the existence, if any, of a serious indication of real risk, such as that referred to in Article 4(4) of the Directive, an indication in the light of which the level of indiscriminate violence required for eligibility for subsidiary protection may be lower.

.....

43. Having regard to all of the foregoing considerations, the answer to the questions referred is that Article 15(c) of the Directive, in conjunction with Article 2(e) of the Directive, must be interpreted as meaning that:

the existence of a serious and individual threat to the life or person of an applicant for subsidiary protection is not subject to the condition that that applicant adduce evidence that he is specifically targeted by reason of factors particular to his personal circumstances;

the existence of such a threat can exceptionally be considered to be established where the degree of indiscriminate violence characterising the armed conflict taking place assessed by the competent national authorities before which an application for subsidiary protection is made, or by the courts of a Member State to which a decision refusing such an application is referred reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to that threat.”

15.

The immigration judge in Master HK’s appeal directed himself according to the 2009 case of GS (existence of internal armed conflict) Afghanistan CG [2009] UKAIT 00010 which was appropriate country guidance at the time. However after the decision of the Tribunal in the case of GS (Article 15(c): indiscriminate violence) Afghanistan CG [2009] UKAIT 00044, the earlier case was found to be no longer extant country guidance. The question to be asked, as formulated in the Court of Appeal case of QD and AH [2009] EWCA Civ 620, is as follows: “is there in Afghanistan, or a material part of it, such a high level of indiscriminate violence that substantial grounds exist for believing that an applicant such as the appellant would, solely by being present there face a real risk that threatens his life or person?”

16.

We therefore set aside the three decisions of the immigration judges and we now proceed to remake them.

Article 15(c)

17.

We turn firstly to the matter of Article 15(c) of the Qualification Directive. Mr Bedford drew our attention to paragraphs 39 and 43 of the European Court’s determination in Elgafaji and we bear in mind their guidance that the more an applicant is able to show that he is specifically affected by reason of factors particular to his own circumstances the lower the level of indiscriminate violence needed for him to be eligible for subsidiary protection. We also note that the AIT considered the situation in Afghanistan in the case of GS on the basis of background and expert materials for the period to May 2009 (at the latest) and found that the violence in Afghanistan had not then reached such a high level that the adult civilian population generally were at risk.

18.

We further take into consideration that, at paragraph 134 of that case, the AIT expressly left open the possibility that there may be categories of individuals for whom there is an enhanced risk where the degree of indiscriminate violence would not need to be as high as it would otherwise need to be for subsidiary protection to be granted. We have carefully considered the UNAMA Report Jan 2010 and, in particular, the increase in the number of civilians killed in 2009. Mr Bedford also pointed out to us that UNAMA reported that UN preliminary figures show that there is a 29.6% year on year increase in security related incidents, with an average of 960.3 incidents per month compared to 741.1 incidents per month for 2008. However we are mindful that no definition of "security related incident" is provided in the report and Mr Bedford was not able to assist us in this regard. We therefore consider that "security related incident" may well be a term which includes military encounters and other encounters of the security forces with dissident groups, and therefore we are unable to gain any assistance from this figure insofar as it may assist us in looking at the risks for the civilians, and the extent to which there has been any increase in those risks. We have also taken into consideration that the methodology used by UNAMA may result in an underreporting, although it is difficult to know to what extent the figures may have been under-reported.

19.

Mr Bedford sought to persuade us that children are particularly vulnerable and face particular disadvantages in the context of the problems associated with armed conflict. We have had particular regard to the evidence he has produced which shows that women and children are victims of air strikes, house raids, suicide and IED attacks and that these attacks often lead to deep psychological scars and trauma. We note that there are reports of children being used to carry out suicide attacks or to plant explosives.

20.

The April 2010 COIR states at paragraph 26.04 that:

"On 6 January 2010 Integrated Regional Information Networks News stated that:

"Armed conflict killed hundreds of children and adversely affected many others in 2009 the deadliest year for Afghan children since 2001- an Afghan Human Rights group has said:

"About 1,050 children died in suicide attacks roadside blasts, air strikes and in the cross fire between Taliban insurgents and pro-government Afghan and foreign forces from January to December 2009 the Afghan Rights Monitor, a Kabul based rights group said in a statement on 6 January:

"At least three children were killed in war related incidents every day in 2009 and many others suffered in diverse mostly unreported ways Almai Smadi, ARM's director was quoted in the statement as saying.' "

21.

We have considered the evidence in considerable detail but we are not satisfied that it shows that children are disproportionately affected by the problems and the conflict currently being experienced in Afghanistan. The roadside blasts, air strikes and crossfire, together with suicide attacks when they occur, do not impact any more upon children than they do upon adult civilians. Furthermore, even though there is shown to be an increase in the number of civilian casualties, we are not satisfied that the evidence is sufficient to show that the guidance given by the AIT in GS is no longer to be regarded as a valid.

22.

The UNAMA Report of 2009 shows that suicide and IED attacks caused more civilian casualties than any other tactic, but notes that such attacks have primarily targeted government or international military forces. These attacks are carried out in areas frequented by civilians and therefore, as a result, civilians are casualties too. We accept that civilians are deliberately targeted with assassinations, abductions and executions if they are perceived to be supportive of or associated with the government or the international community. The report notes that a broad range of civilians including community elders, former military personnel, doctors, teachers and construction workers have been targeted. Other personnel, such as United Nations non-governmental organisations, have also been targeted for receiving threats, and, in some cases, becoming victims of violence. However we find that none of these three appellants has been associated with any of what we might call these “at risk” groups, and there is no reason to believe that they would be upon return to Afghanistan.

23.

The report also shows that there are risks concerned with living near areas of fighting, and where there are search and seizure operations, and being located near to military bases. The civilians located close to these areas can run an increased risk of danger and particularly those living near military installations which have often been targeted by the armed opposition. Civilians have been killed and injured as a result of their proximity to military bases. Again however, there is nothing in the evidence to show that these three appellants would be living in proximity to military bases or to areas where there are military operations, search and seizure operations in particular. Looking at the figures contained in the report regarding the casualties from anti-government elements, we see that IED devices claimed 773 casualties, suicide attacks 281, executions and assassinations 225 and other tactics 351. This latter group resulted primarily from rocket attacks or ground engagements in which civilian bystanders were directly affected. Looking at the detail of the reports concerning suicide and IED attacks, while we note that these attacks have been carried out in a manner which fails to discriminate between civilian and military targets or take adequate precautions to prevent civilian casualties, the information provided in the report shows that the attacks have largely been centred on the types of targets which we have described above. With regards to assassinations, the persons most often assassinated or executed have been those individuals who have acted as informants or spies for the Afghan government or international forces, those working as interpreters, truck drivers and security guards at military bases and those actively supporting the government or belonging to ANSF. It would seem that the majority of assassinations covered in the report took place in the South, South East and Central regions of Afghanistan.

24.

Appalling though these atrocities may be we have no reason to believe that these young individuals would be at real risk of such treatment.

25.

With regard to aerial attacks, the information shows that strikes and close air support accounted for a large percentage of civilian deaths, with 65 incidents recorded in which air strikes resulted in the deaths of civilians in 2009. In all, this resulted in 359 civilian deaths in 2009 and 15% of those killed overall. There is no evidence before us to show that the particular areas in which these three young men were living, or are likely to return to, are the areas in which there is a significant risk of death or injury through such operations.

26.

Finally, with regard to search and seizure operations, although the report recorded 98 civilian deaths as a result of these operations in 2009, again that there is no evidence to show that these young

people are likely to be living in areas where such operations might pose a significant or real risk for them.

27.

We also note the comments made by the appellant's expert Dr Giustozzi at paragraph 5 of his report, where he states as follows:

"Like in Iraq, the risk to civilians is not evenly distributed around the territory of the country. It is highest in the southern provinces and along the highways going from Kabul to the provinces of the South and South East. Significant levels of risk then exist in the south-east and in the east. The risk is lower in the North, North East and in the central highlands. In Kabul city the risk is modest: there have been bloody attacks but the casualty rate among the city's 5 million inhabitants is rather low. The BBC produced a security map of Afghanistan in the summer of 2009, reproduced below. In this map it is shown that the worst areas, red and pink are concentrated in the South and East whereas the yellow areas the next degree of danger, are widespread. White areas are considered to be low risk, even if the Ministry of Interior, on whose data the map is based, tends to underestimate the risk for political reasons. Since the publication of the map, the situation has worsened in some parts of the North in particular such as Kunduz".

28.

Mr Bedford also sought to argue that a "risk of a threat" is something less than a real threat. However, this submission was misconceived. The point has already been decided by the Court of Appeal in *QD (Iraq)* [2009] EWCA Civ 620 as follows:

"27. The ECJ's judgment, however, does not resolve the multiplication of contingencies by articles 2(e) and 15(c). In fact the final words of its answer to the second question appear to adopt it: "a real risk of being subject to that threat". It is possible to devise a theoretical situation in which people can be said to face a risk of a threat (the possibility that a quiescent militia will re-emerge; a rumour that the local wells have been poisoned) but it is not thinkable that the Directive seeks to cover such remote and not truly dangerous situations rather than the real risks and real threats presented by the kinds of endemic act of indiscriminate violence – the placing of car bombs in market places; snipers firing methodically at people in the streets – which have come to disfigure the modern world.

28. In this regard it is possible that the Directive is less strong than IHL, which – as the AIT point out in §126 of KH – prohibits "threats of violence the primary purpose of which is to spread terror among the civilian population". It seems to us clear, nevertheless, that when article 15(c) speaks of a threat to a civilian's life or person it is concerned not with fear alone but with a possibility that may become a reality.

29. In our judgment "risk" in article 2(e) overlaps with "threat" in article 15(c), so that the latter reiterates but does not qualify or dilute the former. As a matter of syntax this no doubt has its problems, but as a matter of law and common sense it does not. Tribunals will of course need to address them in the light of the ECJ's ruling, but as a single, not a cumulative, contingency."

Forced recruitment of children

29.

We now consider the question of the forced recruitment of children in Afghanistan. We have carefully considered the evidence to which Mr Bedford has referred us. We note the reference in the refusal letter to The Child Soldiers Report 2004 which noted:

"Although accurate documentation on the number of child soldiers actively associated with armed groups was not available Unicef reported in mid-2003 that boys aged between 14 and 18 continued to be involved in such groups. They were attracted by promises of payment or education, by a desire to protect their own communities or by the status and power of carrying weapons. Some joined voluntarily, but others were coerced under threat of death or injury. In some cases local commanders demanded that families provide a son to fill quotas imposed by regional commanders. Parents also sent their children to join armed groups for ideological reasons and under 18s joined up alongside their brothers or other family members."

30.

This information is unfortunately now some six years old. It does however show the age group of the boys who may be targeted in this way but it also points out that not all children are coerced and age location and family patterns are all factors to be considered.

31.

The COIR February 2009 quotes the Child Soldiers Global Report of 2008 which refers to anecdotal reports of under 18s serving in the armed forces and reported use of children as suicide bombers by anti-government elements including the Taliban, and forcible recruitment of children in the southern provinces and parts of Pakistan. In this regard we note that none of these three children come from those southern provinces.

32.

Mr Bedford has also referred us to the COIR April 2010 paragraph 26.07 which states as follows:

"...the UNICEF Humanitarian Action Report 2010 published on 4 February 2010 referring to Afghanistan stated that:

"Children continue to face multiple risks to their personal safety especially as community support mechanisms remain weak and there are few government services to protect them and their families from gender based violence and domestic abuse and exploitation. Armed groups continue to recruit children to be used as spies and informants or transport explosives and conduct suicide attacks. These children are subject to arrest capture and detention without due process by Afghan and international military forces for alleged association with armed groups."

33.

The COIR April 2010 paragraph 26.40 also refers to the USSD Report 2009 which noted that:

"...Anecdotal evidence suggests that insurgent recruitment of underage soldiers was on the rise. There were numerous credible reports that the Taliban and other insurgent forces recruited children younger than 18, in some cases as suicide bombers and in other cases to assist with their work. For example in Uzurgan the Taliban reportedly used children to dig hiding places for IEDs. There were many reports of insurgents using minor teenage boys as combatants in Paktya province. In July in Helmand province authorities apprehended a child before he allegedly would have been equipped to become a suicide bomber. NDS officials held several children in the juvenile detention facility in Helmand on insurgency related charges. Although most children were 15 or 16 years old, reports from Ghazni province indicated that insurgents recruited children as young as 12 particularly if they already owned motorbikes and weapons. NGOs and UN agencies reported that the Taliban tricked, promised money to children, or forced them to become suicide bombers ."

34.

We have taken all such reports into consideration. Whilst we cannot discount the forcible recruitment by the Taliban as a risk, particularly in areas of high militant activity or militant control, we conclude that the evidence does not point to this being any more than a mere possibility and not a real risk for these three boys.

35.

We find that there is no particular evidence that the recruitment of child soldiers by the Taliban is a significant problem in the provinces from which these three appellants come: Kunduz, Kunar and Logar provinces.

36.

The first appellant comes from Khanabad in Kunduz province. This is a province in the north of Afghanistan. It is shown to be one of medium risk in Dr Giustozzi's map. The evidence accepted by the AIT was that this boy's parents were killed in an earthquake about five years before he came to the United Kingdom, and he was looked after by his maternal uncle who did not have any children of his own. His father had been forced to work for the Taliban, sewing clothes for them, and there was evidence from the appellant that his uncle had seen forcible recruitment in his area. This appellant had an older brother who was not, according to his evidence, taken by the Taliban but who died due to injuries received in the earthquake. We note that the SEF form records the elder brother of having been aged 22. Therefore, it was legitimate to observe that the Taliban had not shown any interest in recruiting this appellant's elder brother. We are not satisfied that, given the anecdotal nature of the evidence of recruitment of children, the lack of any evidence to show significant recruitment in Kunduz province, and the fact that child recruitment had not been visited on this family in this area in the past, this is a real risk for this appellant.

37.

With regard to the second appellant, this young man comes from Nowabad village in Logar province. It would seem from the risk map of Dr Giustozzi that this area is probably a medium risk area. The immigration judge found that the appellant's father had been taken by the Taliban. The appellant himself gave evidence of local Taliban activity. There is no evidence, however, that the youngsters were taken; again this is not an area where we see any significant evidence of child recruitment by the Taliban. Furthermore, the appellant went to live with his uncle in Heraz for five months, and the appellant was pleased to be living there as there was no fighting going on. This is a province in the extreme west of the country and is categorised as low to medium risk, low risk in the northern part of the province with an increased medium risk in the southern parts. In any event, we are not satisfied that if he returned to live with his uncle in that area he would be at real risk of being recruited.

38.

Finally, with regard to the third appellant, this young man came from Kunar province in the north-eastern part of Afghanistan, which appears to be medium or high risk on the map of danger and security (although it is difficult to tell - without having a coloured map - which it is). He lived with his parents and his younger brother until his father disappeared. His father had been missing for five years, said to be taken by the Taliban. He had been in the care of his maternal uncle and mother. The appellant understood that the Taliban took people from the village and took boys when they were about 10 years old. He had been told this by his family. The appellant had lived in the village all his life and yet there is no evidence from him of him having known of any youngsters actually having been recruited; he relies on what he says he was told by his uncle and mother. We consider that if indeed there was active Taliban recruitment of children in his village the appellant would be likely to have been able to give some evidence of having seen or heard of it himself. He was aged 13 when he

arrived in the United Kingdom and therefore it seems to us he was of an age when he might have been able to recall abductions of young boys.

39.

Although there does appear in this case too to have been evidence of family talk of the taking of young boys by the Taliban, as with the other two young men, there is no material evidence of children being taken in this way, and, at best, there is only anecdotal evidence that this does occur in parts of the country. The country specific evidence is not such as to persuade us that there is a significant problem of child recruitment by the Taliban in the area in which this appellant lived.

Risk of homelessness, forced labour and sexual exploitation

40.

Mr Bedford argued that in ZK (Afghanistan) at paragraphs 25 and 26, Jackson LJ, with whom the Chancellor and Thomas LJ agreed, held that paragraphs 24.40 of the 2008 COIR Report, citing a UNHCR paper dated May 2006, was a sufficient basis for a finding that a child without family in Kabul would be exposed to a risk of severe harm. He also argued that in the case of LQ, the AIT accepted that children in Afghanistan could be regarded as a “particular social group” for the purposes of the Refugee Convention.

41.

First, we do not accept that conclusion assists these appellants. In LQ the Tribunal found that age was an immutable characteristic for the purpose of considering whether a particular social group is shown when considering the Refugee Convention. In the circumstances of that particular case, the tribunal found as follows:

“In the light of the expert evidence, we conclude that the risk of severe harm to the appellant, as found by the Adjudicator, would be as a result of his membership of a group sharing an immutable characteristic and constituting, for the purposes of the Refugee Convention, a particular social group.”

42.

However, this is not to be regarded as any form of country guidance nor precedent for any general proposition that all children in Afghanistan form a particular social group irrespective of their particular family circumstances.

43.

Mr Bedford referred us to the 2009 UNHCR Guidelines which states:

“Unaccompanied and separated children represent one of the most vulnerable groups in Afghanistan, in terms of the potential risks and the weakness of social and legal protection networks...Vulnerable children, include, but are not limited to, those at risk of forced recruitment (including use as suicide bombers), sexual violence, child labour in exploitative conditions and trafficking. Such children are at risk of persecution as a particular social group.”

44. He also referred us to P.61 of those Guidelines which states:

“The traditional family and community structures of the Afghan social and tribal system constitute the main protection and coping mechanism for returning Afghan refugees. The support provided by families, extended families and tribes is limited to areas where family or community links exist, in particular, in the place of origin or habitual residence. Those who may face particular difficulties upon

return include, but are not limited to ... unaccompanied children ... Return to places other than places of origin or previous residence may therefore expose Afghans to insurmountable difficulties not only in sustaining and re-establishing livelihoods but also to security risks. Security risks may include, inter alia, arbitrary detention and arrest targeted killings based on ethnic rivalries and family based conflicts, besides the increasing risks being posed by the ongoing armed conflict, as detailed above ... In this regard, given the differences particular to the situation in Afghanistan, UNHCR advises against the return of persons to areas other than their places of origin or previous areas of residence where they do not have effective family or tribal links and support, unless these returns are voluntary in nature."

45. We also note that the COI Report of April 2010 refers to the fact that police regularly beat and incarcerated children they took off the streets, and quotes the USSD Report of 2009 which noted that child abuse was endemic throughout the country, ranging from general neglect, physical abuse, abandonment, and confinement to working to pay off family debts. We have also had our attention drawn to the Human Rights Watch World report 2009, Afghanistan published in January 2009, which provides information in the practice of bacha bazi (boy play or the keeping of boys as sex slaves by wealthy or powerful patrons) The USSD Report 2009 noted that numerous reports alleged that harems of young boys were cloistered for bacha bazi for sexual and social entertainment, although credible statistics were difficult to acquire as the subject was a source of shame, and 'dancing boys' was a widespread culturally sanctioned form of male rape. We accept that sexual abuse of children remains pervasive in Afghanistan, and that cases of child slavery and debt bondage practices have also risen there, particularly in poor rural communities, and are often disguised as marriage. Child labour is also a factor. According to UNICEF estimates at least 30 percent of primary school-age children undertook some work and there were more than one million child labourers younger than 14. There is also evidence to show that:

"Afghan boys and girls are trafficked within the country for commercial sexual exploitation, forced marriage to settle debts or disputes, forced begging, as well as forced labor or debt bondage in brick kilns carpet making factories and domestic service. Afghan children are also trafficked to Iran and Pakistan for forced labor particularly in Pakistan's carpet factories and forced marriage. Boys are promised enrolment in Islamic schools in Pakistan but instead are trafficked to camps for paramilitary training by extremist groups..."

46. The USSD Report 2009 stated that:

" NGOs estimated there were 60,000 street children in urban areas. Street children had little or no access to government services, although several NGOs provide access to basic needs such as shelter and food...During the year drought and food shortages forced many families to send their children onto the streets to beg for food and money."

47. We have also had regard to paragraphs 14 -16 of Dr Giustozzi's report dated 7 July 2010 where the doctor noted that there are many children working the streets of the capital with their number is increasing. He also noted that there are few orphanages in Kabul, mostly run by the government and the Afghan Red Crescent Society but they do not accept children above 16. He further noted that, in order to survive the winter with the low temperatures in Kabul, young returnees would most likely have to accept the protection of racket organisations which, in exchange for the shelter, force children to work for them, for example, begging on the streets. He also reports on the sexual exploitation of children.

48. We have taken this evidence into consideration, and we agree that it presents a bleak picture for children who are returned to Afghanistan and who do not have a family that will care for them. We note that in the case of the first appellant, the finding of the Tribunal was that this young man from Kunduz province had no parents, although he was looked after by a maternal uncle following the death of his family in the earthquake. His maternal uncle and wife did not have children of their own and clearly became de facto parents of the young man. The immigration judge found that he had a surrogate family in Afghanistan and, if he were to be returned, it was unlikely that his uncle would refuse to care for him. Indeed, Mr Bedford did not dispute that the relatives of all three appellants would be willing to care for their respective appellant. With regard to the second appellant, he was looked after by an uncle when his father disappeared. The third appellant, together with his mother was simply taken to live at an uncle's home after the disappearance of his father.

49. None of these boys is an orphan and none is without family in Afghanistan. It was pointed out on behalf of the Secretary of State that in each of these cases the appellant was advised that he could seek to make contact with his relatives through the auspices of the Red Cross organisation. Information was provided that the Red Cross International tracing service is a way for families who have been separated to try to restore contact. It was noted that it is a free service and that in the United Kingdom contact should be made with the local Red Cross Branch; if the organisation feels that it is able to help the inquirer will be asked to fill in a relevant form which will be sent to the headquarters in London, from whence it is forwarded to the appropriate Red Cross or Red Crescent Society in the appropriate country or to the International Committee of the Red Cross. They can offer assistance in putting the parties in contact through letter or phone.

50. In each case this information was provided in the refusal letter to the appellant, but there was no evidence before the Tribunal in any of the cases that any efforts had been made to contact relatives in Afghanistan. None of these respective families lived in areas of Afghanistan where it might be thought that they could have been displaced by the conflict. None of the families lived in the provinces which are under the control of the Taliban or where there is regular ongoing fighting which the generally displaces local people from their areas. There is no reason to believe that the relatives of these three young men are living anywhere else other than where they were previously living when each the appellants had contact with them.

51. There is no evidence of any endeavour being made on behalf of the any of the appellants to make contact with their relatives still living in Afghanistan. As Mr Bedford accepted, it was not in dispute that the respective families would be willing to collect and take care of these young men upon their return.

52. The Court of Appeal in the case of *HH (Somalia) and others* [2010] EWCA Civ 426 accepted that the route of return for an appellant should be looked at. It was said that it is impossible to decide whether return home is feasible or relocation is reasonable without knowing how the individual is going to get there. They considered that in any case in which it can be shown, either directly or by implication, the route or method of return is envisaged, the Tribunal is required by law to consider and determine any challenge to the safety of the route or method. In that case it was considered that the tribunal had erred in refusing to determine that appeal on the basis of what was known about the route of return. It was known that return would be to Mogadishu airport, and it was implicit that the journey onward would be by road. The Court found that the method of return was a necessary ingredient in any appraisal of risk. Even if they had no real information about this, they were still obliged to do as best as they could to deal with the issue.

53. The Tribunal finds itself with a similar dearth of evidence in these cases. However, it is known that the appellants would be returned to Kabul. The respondent pointed out the availability of assistance through the Red Cross, to which we have referred above. The respondent also made reference to the International Organisation for Migration which assists Afghan nationals through voluntary returns and reintegration into society. It was pointed out in the respective refusal letters that once an application for return assistance has been approved, the IOM sending mission makes travel arrangements and IOM Afghanistan provides reception assistance through the coordination cell at Kabul airport. Their personnel guide beneficiaries through immigration and customs processes. Temporary accommodation is provided upon request and returnees are offered onward transportation and assistance to their final destination. It is therefore our conclusion that assistance would be available to these appellants, both in seeking out their relatives in Afghanistan, and in facilitating their reunion and the reception of the appellants upon return to Kabul. As noted above, we have no reason to believe that contact with their families would be impeded by the situation in Afghanistan, and we have no reason to believe that the families have moved from where they were previously living.

54. The families were all able to make arrangements for the boys to travel out of Afghanistan and to the west. They travelled with the assistance of agents and each of the families was clearly able to provide the finance for such journeys, which is no small amount of money. We have no reason to believe that their families could not travel to Kabul to meet them on their return. Therefore, while we take into consideration the evidence which has been produced regarding the dangers for children in Afghanistan, particularly those who have no family to turn to, we do not believe that these appellants would face a real risk of such eventualities. There is no real risk that they would be homeless as they have families to whom they could return, and they have uncles who would be able to protect them from any abuse or violence on the journey home. There is no reason to believe that they would have to stay in Kabul other than while in transit, and it has not been shown that the level of violence in Afghanistan is such that they could not travel safely from Kabul to their home areas.

Decision

55.

It is our conclusion that the evidence does not show that any of these three young men faces a real risk on return to Afghanistan.

These appeals are therefore dismissed.

Signed

Judge of the Upper Tribunal

(Immigration and Asylum Chamber)

APPENDIX: SCHEDULE OF DOCUMENTS BEFORE THE TRIBUNAL

Date	Source	Description
2007		
December	UN High Commissioner for Refugees (UNHCR)	

		UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of Afghan Asylum Seekers
2008		
3 January	UN High Commissioner for Refugees (UNHCR)	UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of Afghan Asylum Seekers
25 February	US State Department	Human Rights Report 2007: Afghanistan
28 May	Amnesty International	Amnesty International Report 2008: Afghanistan
10 November	United Nations	Report of the Secretary-General on children and armed conflict in Afghanistan
1 December	International Council on Security and Development	Struggle for Kabul: The Taliban Advance
15 December	UNICEF Press Conference	Children in Armed Conflict in Afghanistan Speakers: Mr Bo Asplund, Deputy Special Representative Of The Secretary-General For Afghanistan (DSRSG); Ms Catherine Mbengue, UNICEF Country Representative for Afghanistan; Dr Nilab Mobarez, UNAMA Spokesperson's Office
23 December	Afghanistan Independent Human Rights Commission	Insurgent abuses against Afghan civilians
2009		
14 January	Human Rights Watch	World Report 2009: Afghanistan
17 February	UN Assistance Mission to Afghanistan (UNAMA)	Annual Report on Protection of Civilians in Armed Conflict, 2008
18 February	United Kingdom Home Office Country of Origin Information Service	Afghanistan Country of Origin Report, February 2009
25 February	US Department of State	2008 Human Rights Report: Afghanistan
26 February	Amnesty International	Getting away with murder? The impunity of international forces in Afghanistan.
26 March	United Nations	Report of the Secretary-General on children and armed conflict: Afghanistan

3 April	Oxfam International	Caught in the conflict: Civilians and the international security strategy in Afghanistan
8 April	United Kingdom Home Office Border Agency	Operational Guidance Note: Afghanistan
22 June	US Center of Excellence in Disaster Management and Humanitarian Assistance (COEDMHA)	Dozens killed in security incidents across Afghanistan
July	UN High Commissioner for Refugees (UNHCR)	UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of Afghan Asylum Seekers
9 July	Voice of America News	Bomb Kills 25 in Afghanistan
9 July	Institute for War and Peace Reporting (UK)	Insurgency Gaining Ground in Afghan North
15 July	Voice of America News	Top US General 'Worried' by Rise in Afghan Violence
16 July	Freedom House	Freedom in the World 2009: Afghanistan:
31 July	Voice of America News	UN: Civilian Death Toll Rises in Afghanistan
31 July	Office of the United Nations High Commissioner for Human Rights (OHCHR)	Afghanistan: civilian casualties keep on rising
2010		
January	UN Assistance Mission to Afghanistan (UNAMA)	Annual Report on Protection of Civilians in Armed Conflict, 2009
8 April	United Kingdom Home Office Country of Origin Information Service	Afghanistan Country of Origin Report, February 2010
7 July	Dr Antonio Giustozzi	Country expert report: Violence in Afghanistan