



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

**Appeal Number: UI-2021-000220  
On appeal from PA/51531/2020  
[IA/01031/2020]**

**THE IMMIGRATION ACTS**

**Heard at Cardiff Civil Justice  
Centre  
On the 15 September 2022**

**Decision & Reasons Promulgated  
On the 27 October 2022**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**OK  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms E Fitzsimons, instructed by Duncan Lewis Solicitors  
For the Respondent: Ms S Rushforth, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to contempt of court proceedings.

## **Introduction**

2. The appellant is a citizen of Turkey who was born on 14 April 1983. He is Kurdish. He arrived in the United Kingdom on 30 September 2011 on a forged visit visa.
3. On 9 March 2012, the appellant made an application for leave to remain as a business person under the Ankara Agreement. That application was refused on 11 June 2012 and his subsequent appeal was dismissed on 8 October 2012. He was subsequently detained and removal directions were made.
4. On 23 January 2013 the appellant applied for asylum. That application was refused by the Secretary of State on 17 April 2013. The appellant's appeal was dismissed on 25 June 2013 and permission to appeal was refused by both the First-tier Tribunal on 30 July 2013 and the Upper Tribunal on 27 August 2013. The appellant became appeal rights exhausted on 30 August 2013. Following an allegation of torture being raised, the appellant was released from detention on 27 September 2018. He made an application for settlement on 26 April 2018 but this was refused on 13 July 2018. Further removal directions were made on 8 May 2019.
5. On 26 June 2019 further submissions were made by the appellant which were rejected on 8 July 2019. Again, further submissions were made on 17 July 2019 and these were again rejected on 19 July 2019. However, following a judicial review application, by consent, those decisions were reconsidered. In a decision dated 14 September 2020, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under the ECHR.

## **The Appeal to the First-Tier Tribunal**

6. The appellant appealed to the First-tier Tribunal. The appellant claimed that he was of interest to the Turkish authorities because of his political involvement with the DTP and the BDP. He claimed that he had joined the DTP in 2005 and had been responsible for distributing the party's newspapers and brochures and had attending party meetings. The appellant claimed that he had been detained by the police on three occasions between 2005 and 2007 and had been subject to torture. He claimed that in 2005 he had been shot by persons whom he believed to be the Turkish authorities. He claimed that in 2008, under pressure from his family, he went to live in Istanbul and lived with his uncle. The appellant claimed that he attended demonstrations and campaigned for the BDP with local Kurdish businessmen but that that did not attract the attention of authorities. Thereafter, he claimed that he left Turkey, with the assistance of an agent, on a UK visit visa. He claimed that he would be at risk of persecution on return to Turkey due to his political opinion and previous political activities.

7. In a decision dated 24 June 2021, Judge G Wilson dismissed the appellant's appeal on all grounds. The judge made an adverse credibility finding and rejected the appellant's account that he had been politically active as he claimed in Turkey and that he had been of interest to the Turkish authorities and had been detained and tortured.
8. In addition, Judge Wilson dismissed the appellant's appeal under Arts 3 and 8 of the ECHR.

### **The Appeal to the Upper Tribunal**

9. The appellant sought permission to appeal to the Upper Tribunal challenging the judge's adverse credibility finding on four grounds. None of the other findings of the judge, or his conclusions in relation to Arts 3 and 8 of the ECHR, were challenged.
10. Initially, permission to appeal was refused by the First-tier Tribunal (Judge Grant) on 16 August 2021. However, on the renewed application to the Upper Tribunal, on 29 November 2021, UTJ Kamara granted the appellant permission to appeal with particular reference to grounds 1 and 2.
11. The appeal was listed for hearing on 15 September 2022 at the Cardiff Civil Justice Centre. The appellant was represented by Ms Fitzsimons and the respondent by Ms Rushforth. I heard oral submissions from both representatives.

### **The Grounds of Appeal**

12. Ms Fitzsimons relied upon the detailed grounds of appeal although she focused on grounds 1 and 2 which UTJ Kamara had specifically found to have merit in her grant of permission.
13. Ground 1 contends that the judge failed properly to consider the expert evidence in a medico-legal report from Dr Frank Arnold of the Helen Bamber Foundation and in a psychological report from Dr Rachel Falk. In essence, the ground contends that the judge, having accepted the expert evidence that the appellant had injuries consistent with his account and that he suffered from PTSD (at [35]), inconsistently went on to give that expert evidence reduced weight on the basis that the expert's diagnosis of PTSD together with his other mental health conditions was "in large part" based upon what the appellant had told them (see [36]).
14. Ground 2 contends that the judge fell into error in assessing the country expert's evidence of Ms Sheri Laizer, in particular when doubting the plausibility of the appellant's account about how he left Turkey on a visit visa without incurring any adverse attention from the Turkish authorities.
15. Ground 3 contends that the judge failed to have regard to the evidence, in particular from the appellant, to explain why he delayed leaving his home area of Bingol to move to Istanbul in 2008 and also to why he did not attract adverse attention from the Turkish authorities in Istanbul. Both

of those factors were taken into account by the judge at [55] and [56] as part of his reasons for reaching an adverse credibility finding.

16. Ground 4 contends that the judge wrongly took into account, as he was mistaken as to the facts, that the appellant had not made his further submissions until he was apprehended and detained when the evidence showed that his solicitors were preparing that fresh claim prior to his detention. The judge had been wrong to take that into account (at [65]) as a reason for doubting the credibility of the appellant's claim.
17. Ms Fitzsimons developed those grounds in her oral submissions, with particular reference to grounds 1 and 2.

### **The Respondent's Submissions**

18. On behalf of the respondent, relying upon the detailed rule 24 response, Ms Rushforth submitted that the judge's adverse credibility finding should be sustained. In summary, her submissions were as follows.
19. As regards ground 1, Ms Rushforth submitted that the judge had reached a well-balanced decision in assessing the evidence of Dr Arnold and Dr Falk at [30]-[36]. She acknowledged that the judge accepted that the appellant suffered from PTSD and indeed had injuries (in the form of shotgun pellet scars) consistent with his account. Ms Rushforth submitted that the judge (at [26]) was entitled to place reduced weight upon the expert's attribution of the causes of the appellant's PTSD and injuries (in particular the latter) because that was based in large part upon what he had told the experts. Ms Rushforth, relying upon the rule 24 response, submitted that this approach was consistent with that set out by the Upper Tribunal in JL (medical reports - credibility) China [2013] UKUT 00145 (IAC) ("JL") at paras (3) and (4) of the judicial headnote.
20. As regards ground 2, Ms Rushforth accepted that the judge's point was a bad one that it was not explained how a Turkish citizen could apply for a visit visa without the Turkish authorities knowing. She accepted that the appellant, in applying to the British Embassy for such a visa to come to the UK, would not involve contact with the Turkish authorities. However, Ms Rushforth submitted that at [41], the judge had given other reasons why the appellant's explanation about how he was able to leave Turkey which made any such error immaterial. In particular, Ms Rushforth submitted that the judge had been entitled to distinguish the evidence from Ms Laizer as it relied upon a newspaper report of a German journalist being unable to leave Turkey as justifying the expert's statement that only if a court order was in place could an individual not leave Turkey. She submitted that the judge had been right not to consider that as supporting evidence given that it did not concern a Turkish citizen and was inconsistent with the expert's own view that the Turkish authorities arbitrarily detained Turkish citizens who were Kurdish due to there being little tolerance for Kurdish political opposition.

21. As regards ground 3, Ms Rushforth submitted that, while the judge had not explicitly referred to the appellant's explanation in his evidence as to why he did not immediately leave Bingol, at [55], the judge, in effect, discounted the appellant's explanation when he said that there was "little justification" for his delay in leaving Bingol. Further, the judge made clear findings at [51], [52] and [57] that he did not accept the appellant's political activism in Istanbul. There was, therefore, no material error in failing explicitly to take into account his explanation concerning why he was not subject to adverse interest by the Turkish authorities in Istanbul despite his claimed political activities.
22. As regards ground 4, Mr Rushforth acknowledged that there was evidence that the appellant's legal representatives had been preparing his further submissions prior to his detention. However, she submitted that the appellant's history showed a pattern of claims being made after detention or adverse decisions were made. Further, she submitted that even if there had been preparation of his claim in 2018 prior to his detention, there had been no such activity between 2013 and 2018 which was relevant to the credibility of his claim subsequently made.
23. Ms Rushforth invited me, therefore, to uphold the judge's adverse credibility finding and his decision to dismiss the appeal on all grounds.

## **Discussion**

24. I will deal with each of the grounds in turn.

### *Ground 1*

25. The appellant relied upon two medical reports. The first, prepared by a medico-legal expert from the Helen Bamber Foundation, was by Dr Frank Arnold (E72 - E93 of the respondent's bundle). In that report, Dr Arnold, whom the judge accepted as an expert, dealt first with the scarring evidence and secondly with the appellant's mental health and claim to be suffering from PTSD. At paras 63 - 64, Dr Arnold identified a number of scars on the appellant's body which, in the categorisation of the Istanbul Protocol, he considered to be "diagnostic of shotgun pellet scars". At para 64, Dr Arnold concluded that the injuries strongly suggested that the shooter was at a considerable distance from the appellant. At para 66, Dr Arnold dealt with other scars said to have been caused by the appellant himself with broken glass and likewise, utilising the Istanbul Protocol language, he considered that these were "diagnostic of self-harm". At para 67, Dr Arnold's opinion was that the causative injuries "occurred more than (at least) six months before the present examination".
26. Thereafter, Dr Arnold turned to the evidence and diagnostic tools in relation to PTSD. Diagnosing that the appellant suffered from PTSD, at para 69 Dr Arnold said:

“I based my diagnostic conclusions on my careful clinical observation of [the appellant’s] behaviour, speech and demeanour and not merely on the symptoms he describes to me.”

27. Then at para 70 Dr Arnold set out the basis of his diagnosis of PTSD as follows:

“70. I base my diagnosis of PTSD on the presence of the following clinical features:

- i. [The appellant] gives a history of having experienced relevant stressors (being shot and detained and assaulted by the authorities). Whilst I have no independent corroboration of his history (although the lodged pellets do demonstrate that [the appellant] was shot, they do not indicate by whom and in what circumstances) his presentation is in keeping with such a history.
- ii. He reports that he has intrusion phenomena (flashbacks, intrusive memories, and nightmares). The content of these phenomena is in keeping with his history. (See above.)”

28. At paras 71-75, Dr Arnold considered the potential aetiology of the appellant’s injuries and PTSD and potential other causes as follows:

“71. I have considered the possibility that head injuries could have affected [the appellant’s] brain function (including his memory issues). There is no evidence that the pellets fired at [the appellant] penetrated the skull. The blunt trauma in the police station which knocked [the appellant] unconscious could have impacted upon his memory. However, in my opinion PTSD remains a medically plausible explanation for [the appellant’s] deficiencies in brain function and therefore memory problems. For the avoidance of doubt, I do not consider that brain injury rather than PTSD would be the cause of [the appellant’s] memory problems described above at 46 (vii) of above. Brain injury of the kind described would not in and of itself cause him to meet the diagnostic criteria for PTSD.

72. Assessing the relative contributions of psychological and physical (head) trauma is not usually possible and, in any event, falls outside my field of expertise. Further consideration of the extent to which either or both are responsible for his memory problems would require an opinion from a neuropsychologist, but I doubt that such an option would shed more light on this issue.

73. PTSD can result from any life-threatening experience over which the subject has no control.

74. The list of common causes includes torture, warfare, natural disasters, industrial and automotive accidents, rape and child abuse. I explicitly enquired about, and [the Appellant] denied, any such experience other than those described in the history above.

75. He also displaces evidence of panic attacks (see 46(iv) above, which are often found among survivors of torture and related abuses.”

29. Then at paras 76–79, Dr Arnold reached the following conclusions:

**“CLINICAL PLAUSIBILITY**

76. Paragraphs 105(f), 287(vi), and 290 of the Istanbul Protocol requires rapporteurs to explicitly consider the possibility that examinees may have inaccurately described, or even confected parts or all of the history given. In the present case, all of the clinical findings accord with the history of abuse that [the appellant] described and none are in conflict with it.

**OVERALL EVALUATION**

77. Paragraphs 188 and 261 of the Istanbul Protocol require a medical rapporteur to make an overall evaluation of the likelihood that some or all of their clinical findings are due to torture. In the present case, this is as follows:

78. [The appellant] has eight scars which are variously consistent with, typical of, and diagnostic of the attributions he gives. None are consistent with his attribution.

79. The medical evidence described above make it medically plausible that [the appellant] was harmed in the ways he described and that he has physical and psychological damage as a result.”

30. In addition, the appellant relied upon the expert’s report of Dr Rachel Falk, a clinical psychologist (which is at pages 263 – 296 of the digital bundle).

31. At para 3.1, Dr Falk expressly agreed with Dr Arnold’s conclusion concerning the diagnosis of the appellant’s PTSD. At para 3.2, Dr Falk went on also to diagnose the appellant as suffering from “associated depression and anxiety”. Following a detailed consideration of the reported symptoms and demeanour of the appellant, at paras 3.55 – 3.59, Dr Falk responded to the Home Office’s position concerning the appellant’s mental health in the decision letter. At paras 3.57 – 3.59, Dr Falk gave detailed reasons for supporting Dr Arnold’s diagnosis as follows:

“3.57 I believe Dr Arnold was invited to comment on the potential impact of returning to Turkey on [the appellant’s] mental wellbeing, and whether his presentation is consistent with the events described and his appraisals of these events. I do not believe Dr Arnold is commenting [the appellant] Clinical Psychology Report Page 18 of 34 on the credibility of [the appellant] account from a fact-finding perspective, but is using the evidence presented to him to address questions relevant to his independent expertise i.e. could subjective fear of X cause symptoms consistent with Y? I note that in the present report, when I have referred to [the appellant’s] past experiences and current fears, I use this as the evidence presented to me at this time. It is, in my opinion, unreasonable to say that because I, or any independent expert, have not witnessed events we are unable to use the evidence presented to us to inform our clinical, expert, opinion. Indeed, if this were the case, we could never collect and objectively use a medical/psychological

history to inform our formulation of a client's difficulties and draw conclusions on diagnosis. I also think it is important to state that as one completes extensive training and gains experience of collecting such histories, one also gains experience in how individuals present their experiences and talk about the impact of such experiences.

- 3.58 To this end, I have considered whether [the appellant] might be feigning or exaggerating his psychological symptoms. To assess this, I asked open questions to obtain his spontaneous descriptions of his symptoms. I avoided asking him closed questions, as much as possible, thus avoiding prompting answers from him during the interview. From the manner in which [the appellant] told his story, his voice tone, and facial expressions (when he had his camera on), I do not believe that it was feigned or exaggerated. Overall, I found nothing to suggest that he was trying to exaggerate or feign any psychological distress. Persons confabulating psychological sequelae are prone to 'overplay' symptoms in order to provide for a diagnosis of PTSD or to suggest that they pose a risk to themselves. I note that [the appellant] did not do so. Indeed, he was careful to describe his fluctuating symptomology (i.e. denied current suicidal ideation or plans to self-harm).
- 3.59 I further note that [the appellant] has now been assessed by at least four clinicians, from differing backgrounds and services. All clinicians including, Dr Jenny Jones (GP; Nov 2018), Claire Rockliffe-Fidler (Clinical Psychologist; Dec 2018), Samantha Dodd (Social Worker; Dec 2018), Dr Arnold (June 2019) and myself, have drawn similar conclusions in our opinion that [the appellant] is suffering with symptoms of PTSD."

32. Judge Wilson dealt with Dr Arnold's evidence at [30]-[31] of his decision as follows:

"Medical Evidence and Medico Legal Report

30. The Appellant has produced a medico-legal report from Dr Frank Arnold of the Helen Bamber Foundation. As asserted in the Appellant's appeal skeleton argument, the Helen Bamber Foundation is recognised by the Respondent as being an expert and reputable medico-legal organisation. Within the report, Dr Arnold confirms that he is a specialist in wound healing and has 15 years' experience preparing medico-legal reports. Dr Arnold assessed the Appellant's scars in accordance with the Istanbul protocol and found that scars S1 to S3 were diagnostic of shotgun pellet scars. Dr Arnold found that the scars that the Appellant attributed to self-harm with broken glass were diagnostic of that attribution. Diagnostic, within the context of the Istanbul protocol, means that the appearance could not have been caused in any other manner than in the way described. Dr Arnold opines that the medical evidence makes it "medically plausible" that the Appellant was harmed in the way he describes. On the basis of Dr Arnold's report, the Respondent accepts that three of the Appellant's injuries have been caused by shotgun pellets. However, the Respondent relies on the credibility findings of Judge Knowles



and asserts that the Appellant's injuries has have been caused in circumstances other than those described by the Appellant. On the basis of Dr Arnold's report, I accept that the Appellant has been shot in the head with shogun pellets and the Appellant has self-harmed by cutting his arm with glass. Dr Arnold opines that the Appellant also displays evidence of panic attacks which are often found among survivors of torture and related abuse.

31. Dr Arnold concludes that the Appellant meets the criteria for PTSD. Dr Arnold based his diagnostic conclusions on the basis of "careful clinical observations of the Appellant's behaviour, speech and demeanour, and not merely on the symptoms he described". Dr Arnold states that PTSD can result from any life-threatening experience over which the subject has no control. Dr Arnold explicitly enquires about other causes. In Dr Arnold's opinion, PTSD remains a "medically plausible explanation for the Appellant's deficiencies in brain function and therefore memory problems. DR Arnold opines that the Appellant's prognosis is improved by the support of his friends and family which he has in the UK which is a protective factor. Separation from his support network is likely to cause a deterioration in his mental health. Although the Appellant has a history of self-harm his risk of suicide or self-harm was assessed as moderate to low. Dr Arnold opines that generally, people with PTSD show increased suicidality and self-harm. In Dr Arnold's clinical opinion, the risk of 8 Appeal Number: PA/51531/2020 suicide and self-harm would increase the Appellant were made to return. However, this risk should be reassessed at that time."

33. The judge then, having dealt with a Rule 35 assessment, turned to Dr Falk's evidence at [33] and said this:

"33. The Appellant relies upon a report of Dr Rachel Falk completed on 1 March 2021. On the basis of Dr Falks experience and qualifications set out in her report I find that she is appropriately qualified to opine in the matters contained within her report. Dr Falk's report can be summarised as follows:

- a. In addition to PTSD, the Appellant also meets the diagnosis for associated depression and anxiety;
- b. The Appellant's anxiety, depression and PTSD could be a major factor in his processing and recall of events.
- c. The Appellant is currently at low risk of suicide. However, Dr Falks believed that the Appellant's mental health would deteriorate and risk of suicide increase, if he did not obtain leave to remain in the United Kingdom."

34. Then, at [34]-[36], the judge reached the following conclusions:

"34. I have considered the reports in two ways. Firstly, whether the findings in the medical reports affect how the Appellant's evidence should be assessed by the Tribunal. Secondly, whether the reports are corroborative evidence of the Appellant's account.

35. I have considered the medical reports report in accordance with the principles set out within JL (medical reports-credibility) China

[2013] UKUT 00145 (IAC). Both Dr Arnold and Dr Falks considered the Appellant's interviews, statements, Reasons for Refusal Letters together with the determination of Judge Knowles. Both Dr Arnold and Dr Falks confirm that they understand their duty to the court. Both Dr Arnold and Dr Falks considered the possibility that the Appellant may be feigning or exaggerating his symptoms. Both Dr Arnold and Dr Falks made their diagnosis on the basis of recognised diagnostic tools and criteria. Accordingly, I find that Both Dr Arnold and Dr Falks carried out a critical and objective analysis. Accordingly, I accept their diagnosis that the Appellant suffers from anxiety, depression and PTSD which could be a major factor in his processing and recall of events. I assess the credibility of the Appellant's account within this context.

36. However, the doctors' attribution of the Appellant's PTSD, depression and anxiety to the Appellant's account of events in Turkey is based, in large part, on what the Appellant has told the doctors. This reduces the weight that I place upon the Appellant's diagnosis of PTSD, together with the Appellant's other mental health conditions, as corroboration of the Appellant's claimed account."

35. The judge finally dealt with the medical expert evidence [at 67] in the context of drawing together all the material and evidence relating to the appellant's credibility as follows:

"67. Judge Knowles' decision and reasons is my starting point. On the basis of the medical evidence before me I have found that the Appellant suffers from anxiety, depression and PTSD which could be a major factor in his processing and recall of events. Assessing the Appellant's credibility within this context I do not take any discrepant evidence in relation to times or dates or the Appellant's muddled account of events as identified by Judge Knowles, or otherwise, against the Appellant. However, for the reasons set out above I have not placed weight upon the Appellant's diagnosis of PTSD anxiety and depression as corroboration of the Appellant's account. I accept that medical evidence corroborates the Appellant's claim that he has been shot in the head. However, the medical evidence cannot confirm the circumstances in which such shooting took place. I accept that the Appellant's evidence is broadly consistent with that of his sister. The expert report provides that events of the kind that the Appellant has described took place within Turkey at the relevant time. This weighs in favour of the credibility of the Appellant's account. However, I have found the letter from Idris Baluken BDP Party Deputy Chairman not to be reliable. In addition, the Appellant's account contains numerous elements which are inconsistent with the risk that the Appellant claims to have faced in Turkey and are incoherent when considered within the context of his account as a whole. I find that the Appellant's behaviour within the UK including his delay in claiming assignment and the timing of his claim for asylum and further submissions, in each case after he had been apprehended and detained, damage his credibility. I find that the Appellant's use of deception in his dealings with immigration officials damages his credibility. I have

found that the Appellant's lack of any form of political activity in the UK is inconsistent with his claim to be committed to Kurdish rights and incoherent when assessed against the Appellant's claimed commitment to such cause within Turkey. For all these reasons, I find that the Appellant has failed to demonstrate, to the lower standard of proof, that he was of interest to the Turkish authorities in the manner that he claims, or at all."

36. As can be seen in [67], Judge Wilson stated that he has  
"not placed weight upon the appellant's diagnosis of PTSD, anxiety and depression as corroboration of the appellant's account."
37. That is a somewhat stronger statement than he made in [38] that he would give the evidence "reduce[d] the weight" in determining whether, and to what extent, the diagnosis of PTSD corroborated the appellant's claimed account.
38. There are numerous authorities dealing with the proper approach that a fact-finder should adopt in assessing expert medical evidence, whether relating to physical injuries (such as scarring) or mental health (such as PTSD). I was referred to two specific cases by the representatives.
39. Ms Fitzsimons placed reliance upon what was said by the Court of Appeal in MN and IXU v SSHD [2020] EWCA Civ 1746 ("MN and IXU"). That case concerned individuals who claimed to be victims of human trafficking and whose claims were being considered by the National Referral Mechanism. The relevant issue that arose in those cases concerned the proper approach to be given to expert evidence when assessing the credibility of a claimant's account. Delivering the judgment of the court, Underhill LJ (with Baker and Simler LJJ) considered the proper approach to expert evidence in that context at [102] - [123]. The Court of Appeal set out a number of earlier authorities and at [121] summarised those authorities as follows:
- "121. In our view the law as appears from those authorities (so far as relevant to the issues in these appeals) can be summarised as follows:
- (1) The decision whether the account given by an applicant is in the essential respects truthful has to be taken by the tribunal or CA caseworker (for short, the decision-maker) on the totality of the evidence, viewed holistically - *Mibanga*.
  - (2) Where a doctor's opinion, properly understood, goes no further than a finding of "mere consistency" with the applicant's account it is, necessarily, neutral on the question whether that account is truthful - see *HE (DRC)*, but the point is in truth obvious.
  - (3) However, it is open to a doctor to express an opinion to the effect that his or her findings are positively supportive of the truthfulness of an applicant's account (i.e. an opinion going beyond "mere consistency"); and where they do so that opinion should in principle be taken into account - *HK; MO (Algeria)*; and indeed, though less explicitly, *Mibanga*. In so far as Keene LJ said

in *HH (Ethiopia)* that the doctor in that case should not have expressed such an opinion (see para. 117 (1) above), that cannot be read as expressing a general rule to that effect.

(4) Such an opinion may be based on physical findings (such as specially characteristic scarring). But it may also be based on an assessment of the applicant's reported symptoms, including symptoms of mental ill-health, and/or of their overall presentation and history. Such evidence is equally in principle admissible: there is no rule that doctors are disabled by their professional role from considering critically the truthfulness of what they are told – *Minani; HK; MO (Algeria); SS (Sri Lanka)*. We would add that in the context of a decision taken by the CA on a wholly paper basis, a doctor's assessment of the truthfulness of the applicant may (subject to point (5) below) be of particular value.

(5) The weight to be given to any such expression of opinion will depend on the circumstances of the particular case. It can never be determinative, and the decision-maker will have to decide in each case to what extent its value has to be discounted for reasons of the kind given by Ouseley J at para. 18 of his judgment in *HE (DRC)*.

(6) One factor bearing on the weight to be given to an expression of opinion by a doctor that the applicant's reported symptoms support their case that they were persecuted or trafficked (as the case may be) is whether there are other possible causes of those symptoms. For the reasons explained by Ouseley J (*loc. cit.*), there may very well be obvious other potential causes in cases of this kind. If the expert has not considered that question that does not justify excluding it altogether: *SS (Sri Lanka)*. It may diminish the value that can be put on their opinion, but the extent to which that is so will depend on the likelihood of such other causes operating in the particular case and producing the symptoms in question." (footnotes omitted)

40. At [123], Underhill LJ concluded:

"123. The essential message of that possibly over-elaborate discussion is that decision-makers should in each case assess whether and to what extent any particular expert evidence relied on by an applicant supports their case as a matter of rational analysis. Observations in the case-law are useful in drawing attention to likely limitations on the value of particular kinds of evidence, but they should not be treated as laying down rigid rules. If there are qualifications to the value to be given to a particular piece of evidence, that is not a reason for excluding it altogether: if it has some weight it must go into the overall assessment.

41. Ms Fitzsimons places reliance upon point (4) set out above that the experts, in particular Dr Arnold, was entitled to base his conclusions in relation to his findings including in respect of the appellant's PTSD based in part upon a critical assessment of what was being said by the individual concerned.

42. As is said in point (5), those conclusions are never determinative because the ultimate decision as to whether or not the appellant is to be believed is a matter for the fact-finder. The expressions of opinion by the expert can be scrutinised by the fact-finder including assessing other potential causes of the individual's condition. Point (5) refers specifically to the decision of the IAT in HE (DRC) v SSHD [2004] UKAIT 321 at [18] of the judgement of Ouseley J where he said this:

“18. Where the report is a psychiatric report, often diagnosing PTSD or some form of depression, there are often observations of behaviour at the interview, and a recounting of the answers given to questions about relevant conditions eg dreams and sleep patterns. Sometimes these answers are said to be consistent with what has been set out as the relevant history of the applicant. It is more difficult for the psychiatrist to treat what he observes as objectively verified, than it is for the description of physical conditions, because they are the more readily feigned; it is rare for a psychiatrist's report to be able to indicate that any part of the observations were undertaken in a way which makes them more objectively verifiable. It is the more difficult for there to be any verification of conditions which the psychiatrist cannot observe and for which he is wholly dependent on the applicant. The further major problem with the contention that a psychiatric report can be used to support an applicant's claim to have told the truth about the history, is that there are usually other obvious potential causes for the signs of anxiety, stress and depression. These include the fact that the applicant may be facing return to the country which he has left, at some expense to himself and family, and it may well not be a pleasant place to which to return. He may face the loss of friendships and lifestyle which he has enjoyed in the United Kingdom. There may be a loss of family contacts and of medical treatment. He may anyway suffer from some depression, without having been ill-treated in a way requiring international protection. He may have experienced difficulties other than those which he relies on for his claim. But it is very rare, and it will usually be very difficult, for a psychiatrist to assess such other factors without engaging in the process of testing the truth of what the applicant says. This is not his task and if there is a therapeutic side to the interview, it may run counter to those aims as seen properly by the doctor.

43. Ms Rushforth referred me to the decision of the UT in JL as set out in the respondent reply at paras (2)–(4) of the judicial headnote the following is said:

“(2) [Those writing medical reports for use in immigration and asylum appeals] should also bear in mind that when an advocate wishes to rely on their medical report to support the credibility of an appellant's account, they will be expected to identify what about it affords support to what the appellant has said and which is not dependent on what the appellant has said to the doctor (HE (DRC, credibility and psychiatric reports) Democratic Republic of Congo [2004] UKAIT 000321). The more a diagnosis is dependent on assuming that the account given by the appellant was to be believed, the less likely it is that significant weight will be attached to it (HH (Ethiopia) [2007] EWCA Civ 306 [23]).

- (3) The authors of such medical reports also need to understand that what is expected of them is a critical and objective analysis of the injuries and/or symptoms displayed. They need to be vigilant that ultimately whether an appellant's account of the underlying events is or is not credible and plausible is a question of legal appraisal and a matter for the tribunal judge, not the expert doctors (IY [47]; see also HH (Ethiopia) [2007] EWCA Civ 306 [17]-[18]).
- (4) For their part, judges should be aware that, whilst the overall assessment of credibility is for them, medical reports may well involve assessments of the compatibility of the appellant's account with physical marks or symptoms, or mental condition: (SA (Somalia) [2006] EWCA Civ 1302). If the position were otherwise, the central tenets of the Istanbul Protocol would be misconceived, whenever there was a dispute about claimed causation of scars, and judges could not apply its guidance, contrary to what they are enjoined to do by SA (Somalia). Even where medical experts rely heavily on the account given by the person concerned, that does not mean their reports lack or lose their status as independent evidence, although it may reduce very considerably the weight that can be attached to them."

44. In my judgment, the approach in JL does not require a different approach to that authoritatively reached by the Court of Appeal subsequently in MN & IXU. Medical experts may rely heavily on the account given by an individual but that does not deprive their reports of the status of "independent evidence" although it may affect the weight that can be attached to them. An overall assessment must be made of the experts reasoning and the extent to which their assessment factors in potential dissembling by the individual of his circumstances and symptoms and the expert's opinion on the possible other causes of the claimed injuries or mental health condition.

45. I should refer briefly to one further decision, although I was not referred to it by the representatives, namely the Supreme Court decision in KV (Sri Lanka) v SSHD [2019] UKSC 10. In that case, the Supreme Court was concerned with expert evidence dealing with scarring found upon an individual who claimed that he had been tortured by the Sri Lankan authorities. The Supreme Court concluded that expert evidence, in compliance with the Istanbul Protocol, could provide supporting evidence of the causation of injuries. At [20], Lord Wilson (with whom the other Justices agreed) said this:

"20. ... In their supremely difficult and important task, exemplified by the present case, of analysing whether scars have been established to be the result of torture, decision-makers can legitimately receive assistance, often valuable, from medical experts who feel able, within their expertise, to offer an opinion about the consistency of their findings with the asylum-seeker's account of the circumstances in which the scarring was sustained, not limited to the mechanism by which it was sustained. Had the contribution of Dr Zapata-Bravo been limited to confirming KV's account that the scarring was caused by

application of a hot metal rod, it would have added little to what was already a likely conclusion. But, when he proceeded to correlate his findings of a difference in the presentation of the scars on the back and those on the arm with KV's account of how the alleged torture had proceeded, he was giving assistance to the tribunal of significant potential value; and it never suggested that he lacked the expertise with which to do so.

46. In this appeal, Judge Wilson was not required to treat the evidence of Dr Arnold (and its confirmation by Dr Falk) as determinative of any causal connection said to arise from the appellant's physical injuries or PTSD. The judge was required to consider that evidence and give it appropriate weight consistent with its internal coherence and other evidence, looked at holistically, in assessing the appellant's credibility. Judge Wilson accepted the appellant's physical and mental health conditions at [35]. He did so accepting that Dr Arnold and Dr Falk's analysis were both "critical and objective". Here, it is clear from Dr Arnold's evidence that he did consider, for example, alternative causes of the appellant's physical injuries and, indeed, his PTSD. Given the "diagnostic" characterisation of the physical injuries, those would seem to bear considerable weight as part of an assessment of the credibility of what the appellant claimed had happened to him in Turkey. The PTSD diagnosis was not so compelling, perhaps, given the process and mechanism for diagnosing PTSD based upon observation and recounting of symptoms (see [18] of HE (DRC)). Nevertheless, without careful and scrutinised analysis, even that latter evidence could not simply be given *no* weight even if it were based upon only what the appellant had said to Dr Arnold. But, of course, it was, as Dr Arnold's report testifies, based upon demeanour and other observations by Dr Arnold as well. In my judgment, even if Judge Wilson could have been entitled to give that evidence "reduce[d]" weight, that would need to be more reasoned than the simple statement in [36] that it was "based, in large part, on what the appellant had told the doctors". But, once Judge Wilson came to reach his overall conclusion on credibility at [67], he had moved from giving it reduced weight to placing no weight upon it whatsoever. That is made plain in [67] when he says: "I have not placed weight upon the appellant's diagnosis of PTSD, anxiety and depression as corroborative of the appellant's account".
47. In my judgment, that was an error of law in approach. To reach such a conclusion would have required a more detailed and critical analysis of the evidence beyond simply asserting (even if it had been the case) that the opinion was based upon what the appellant had told Dr Arnold.

#### *Ground 2*

48. In assessing the credibility of the appellant, Judge Wilson doubted his account, in part, because he rejected the appellant's account about how he had managed to leave Turkey on a UK visit visa. The judge dealt with this at [41] of his decision:

“41. I do however have concerns in relation to the country expert evidence set out within with in her additional report dated 13 April 2021 (amended to 21 May 2021). Within that document the country expert considered how the Appellant was able to successfully obtain a visit visa without incurring any adverse attention from the Turkish authorities. The expert says that a Turkish citizen can apply for Visa without the authorities knowing. The expert does not offer a source or cite objective evidence to support this assertion. The expert goes on to state that for a citizen to be stopped from leaving the country he must be specifically made subject to a court order that prevents them from leaving the country. The country expert relies upon a source from France 24.com. The source refers to a “German journalist”. Accordingly, the objective source that is cited is in relation to a foreign national not a Turkish citizen. In addition, the expert evidence in this regard is incoherent when considered with the other sections of her report which highlights a Turkish government which has little tolerance for Kurdish political opposition and at the time the Appellant was engaged in opposition and subsequently left the company the authorities acted in an arbitrary way such as to arbitrarily detain Kurdish Turkish citizens and engage in extrajudicial killings and arbitrary detention. Against this background, it is incoherent for the expert to assert on one hand that the authorities would act in an arbitrary way to include arbitrary detention killing yet on the other hand comply rigidly with a court process which required a court order to be in place before a citizen was of interest to the Turkish authorities could depart the country. Accordingly, I place little weight upon this element of the country expert’s report.”

49. Ms Fitzsimons submitted that the judge had not been entitled to reject Ms Laizer’s opinion that the appellant could leave Turkey on a UK visit visa without incurring any adverse attention from the Turkish authorities. Ms Fitzsimons submitted that the expert was plainly correct that a visit visa to the UK obtained from the British Embassy would not be something that would draw any adverse attention from the Turkish authorities who would not know about it.
50. Ms Rushforth accepted that the point made by the judge in this regard was a ‘bad point’. However, she sought to overcome that error on the basis that the judge had been entitled to discount Ms Laizer’s evidence concerning how the appellant left Turkey on the basis that first, she had referred to a report in a relation to a “German journalist” leaving Turkey and that, it would only be if there was a court order in place, that the appellant would be unable to leave. She submitted that the evidence concerning a “German journalist” was properly considered to be different by the judge when considering whether the appellant, as a Turkish citizen, would be able to leave Turkey and also the expert’s view about only a “court order” preventing a Turkish citizen leaving Turkey was inconsistent with the evidence that the Turkish authorities arbitrarily detained Turkish citizens of Kurdish ethnicity because of their lack of tolerance for Kurdish political opposition.



51. In response to this point, Ms Fitzsimons relied upon Ms Laizer's report at pages 7 - 8 where she set out her view as to why the appellant could have left Turkey without any adverse interest:

- "c. Why you did not explain how [the appellant] was able to successfully obtain a visitor's visa 'without incurring any adverse attention from the Turkish authorities' in your previous report and whether you consider the client's account on this credible in light of your expert knowledge/ experience of Turkey (para 88);
- v. I note from the Home Office decision at para. 88, reproduced here for ease of reference, the assertion:

'Furthermore, Ms Laizer does not explain how you were also able to successfully obtain a visitor visa without incurring any adverse attention from the Turkish authorities. It is noted that you were able to leave Turkey without any difficulty, on a valid visa and a valid Turkish passport, despite the stringent security checks in place at the International airport.'
- vi. In my response to this, it must be stated that any Turkish citizen can apply for a visa without the authorities knowing he has applied for it. Additionally, if a citizen obtains any visa to travel abroad, for him or her to be stopped from leaving the country s/he must specifically be made subject to a court order that bars them from leaving the country and in that way prevents departure. 4 Where this ban via court order has not occurred, they are legally free to travel.
- vii. Furthermore, many corrupt officials work in the airport, as elsewhere in Turkey. For a bribe, or as a favour, they can easily steer someone to the right channel to enable them to leave without a problem - even when their name might be logged in the computer on a security blacklist it can be removed, covered up or ignored. I note [the appellant's] assertion as to being directed to a specific officer in his appeal witness statement. It is also pertinent to emphasis how in 2016, ISIS suicide bombers succeeded in penetrating Istanbul Ataturk Airport all the way to the departures counters in the International terminal before detonating their vests or being shot at. 5 How they managed to get that far etc. has been kept a state secret:

### **Erdogan turns a blind eye to Turkey's terror threats**

**The New Arab, Yvo Fitzherbert, 1 July 2016**

**"...Comment: Until public perception of terrorism in Turkey shifts away from Kurdish militants and towards IS, Erdogan will not budge from wilfully ignoring the threat of IS, writes Yvo Fitzherbert**

*Three attackers are thought to have been involved in the coordinated attack inside Istanbul's Ataturk airport, which killed 43 people. Reports have emerged showing how the three men, armed with Kalashnikov rifles, opened fire before detonating their suicide vests when confronted by police officers. The whole rampage is thought to have lasted only a few minutes, while*

*terrified passengers hid behind check-in desks and raced back towards the planes they had just disembarked from.*

*In the immediate aftermath of the attack, the Turkish government imposed a broadcast ban on reporting on the attack. This was followed by the government rejecting a demand for an investigation of the attack. As a result, Turks - those who live in fear of such attacks - are given no answers, no explanations to soothe their fears. Instead, the government controls the narrative...*

*With his relentless campaign against the Kurds in the south-east of the country, his priorities haven't changed. The ban on media and on an investigation is an attempt to divert public attention away from Islamic terrorism, and towards the terrorism of the PKK.*

*The reason Erdogan is eager to divert attention towards the terror of the PKK is clear: Historically, fighting the PKK has been an electoral winner in Turkey. When the pro-Kurdish HDP for the first time won 10% in last June's election - denying Erdogan the majority he craved - the President's response was to restart war with the PKK...*

*With the breakdown of peace, terror was back on the table in Turkey. In the following November election, AKP clawed back a majority while HDP lost out. Erdogan needs Kurdish terror. It proved an extremely popular move among the country's nationalist voters. Thus, his unilateral obsession with defeating the PKK is a pragmatist strategy to hold on to support..."*

52. Ms Fitzsimons submitted that the appellant's account was that he had used an agent and that he had been directed to a particular passport officer whom he approached and allowed him to pass through passport control. This is set out in paras 53 - 54 of the appellant's witness statement dated 14 April 2021 as follows:

"53. My uncle helped me to find an agency which he told me would sort out my visa and passport to come to the United Kingdom. It was the advice of the agency that I should apply for a visa to come to the UK. This agency applied for a Turkish passport for me after I provided them with my photograph and ID card. The agency then took my passport and sent it to the British Embassy, who gave me a visa to come to the United Kingdom. My uncle then gave me my flight tickets and told me when to attend the airport.

54. I travelled from Istanbul Sabiha Gokcen Airport in September 2011, flying directly to the United Kingdom. I was escorted at the airport by a man arranged by the agent. He took me through to the passport control point. I was told that I should go to a specific passport officer and told when I should approach that officer. I followed the man's instructions and I was allowed through passport control. I have no idea what arrangements were made on my behalf but I just did what I was being told to do so I could leave Turkey without any issues."

53. Ms Fitzsimons submitted that this evidence was consistent with that of Ms Laizer as to the use of bribery in order for an individual to be able to leave Turkey unhindered. She submitted that in rejecting Ms Laizer's evidence at [41], the judge failed to take that evidence into account in reaching the conclusion that it was implausible that the appellant would be able to leave Turkey without incurring any adverse attention from the Turkish authorities.
54. I accept that submission. Whilst there may be some confusion as to the precise importance of the reference to a news item concerning a "German journalist", the thrust of Mr Laizer's evidence is plain that, first the appellant would not come to the attention of the authorities simply by obtaining a visit visa from the British Embassy; and secondly, even a person of interest to the authorities (whether subject to a court order or otherwise) could, through bribery, potentially leave Turkey without hindrance. The judge erred in law by failing to consider that explanation founded in both the appellant's evidence and supported by that of the expert, Ms Laizer.

*Conclusion on Grounds 1 and 2*

55. In granting permission, UTJ Kamara specifically relied upon grounds 1 and 2. Ms Fitzsimons principally focused on those two grounds although she, together with Ms Rushforth in response, also addressed me on grounds 3 and 4.
56. In my judgment, it is unnecessary for me to reach conclusions on grounds 3 and 4 as the errors I have identified in grounds 1 and 2 are sufficiently significant to the judge's reasoning that, in themselves, they are material errors of law which make his adverse credibility finding unsustainable. The failure properly to consider the medical expert evidence, was in my judgment, a significant error in assessing the appellant's credibility. Likewise, in disbelieving the appellant's claimed mode of departure from Turkey, the judge disbelieved the appellant in a significant aspect of his account based upon his claim to be of adverse interest to the Turkish authorities because of his political activities in Turkey. In concluding that it was not plausible that the appellant could leave Turkey in the way he claimed if he was of adverse interest to the Turkish authorities, the judge necessarily cast doubt on the credibility of the appellant's entire account of his political activity in Turkey which was the basis of his asylum claim.
57. For these reasons, therefore, I am satisfied on the basis of grounds 1 and 2 that the judge materially erred in law. It is not, therefore, necessary for me to consider grounds 3 and 4 which did not specifically feature in the grant of permission and which Ms Fitzsimons recognised were not the focus of her challenge to the judge's decision.
58. In the result, the judge materially erred in law in reaching his adverse credibility finding and in dismissing the appellant's appeal.

## **Decision**

59. The decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law. That decision cannot stand and is set aside.
60. Given the nature and extent of fact-finding required, and having regard to para 7.2 of the Senior President's Practice Statement, the proper disposal of this appeal is to remit it to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge Wilson. No factual findings are preserved.

Signed

**Andrew Grubb**

Judge of the Upper Tribunal  
26 September 2022