



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

**Case No: UI-2023-002946**

**First-tier Tribunal No: PA/  
12382/2019**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

10 September 2024

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**A H K  
(ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms Jegarajah, Counsel

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

**Heard at Field House on 14 August 2024**

**DECISION AND REASONS**

1. The Appellant is an Iraqi national. He arrived in this country on 10 July 2006 and claimed asylum. His application was refused but he was granted discretionary leave to remain until 24 July 2010. His appeal against this decision was dismissed. He sought to extend his leave on 16 June 2010 but before that decision was considered the Appellant was convicted on 24 May 2012 of supplying Class A drugs and sentenced to 33 months imprisonment. He was served with a notice of liability to deportation and

on 8 May 2013 a decision was taken to refuse his claim to refuse any protection claim and a signed deportation order was served.

2. The Appellant raised sexuality as a ground of asylum on 13 May 2014 albeit that ground was withdrawn on 24 July 2019 when the Appellant submitted additional submissions as to why the deportation notice should be revoked. The Respondent refused this application on 4 December 2019.
3. The matter eventually came before First-tier Judge Scott-Baker on 5 April 2023. In a decision promulgated on 18 May 2023 the Appellant's appeal was dismissed on all grounds.
4. The Appellant appealed that decision and First-tier Judge Saffer refused permission to appeal. Permission was renewed and on 12 June 2024 Upper Tribunal Judge C Lane granted permission to appeal stating:

“Ground 1 is no longer pursued.

Ground 2 (absence of findings as regards the appellant's mental health) may be argued.

That part of Ground 3 which challenges the judge's findings regarding the appellant's family members in Iraq is without merit; the judge was manifestly entitled on the evidence to find that the appellant would have the assistance of family members on return to Iraq.

The remainder of Ground 3 (paragraphs [12-19] of the renewed grounds) may be argued.”

5. At the hearing Ms Jegarajah raised an additional issue namely that the FTT Judge had erroneously considered the facts on the basis the Appellant had been sentenced to 41 months when in fact the actual sentence was 33 months. Mr Wain opposed this application stating the ground was raised late in the day and in any event this error did not alter the way the FTT Judge had to consider the same as the sentence remained a sentence under four years. Whilst I accept there was an error in the way the FTT Judge recorded the Appellant's sentence I am satisfied it would not be material given the FTT Judge would still have considered the Appellant's position using the same principles.

## **SUBMISSIONS**

6. Ms Jegarajah adopted the grounds of appeal and submitted the starting point was the Appellant's appeal decision from 2013 (page 326 of the bundle) in which Judge Simpson found the Appellant had no family in Iraq.
7. Ms Jegarajah argued the FTT Judge's approach to the expert evidence was inadequate and her finding that the Appellant had access to extended family was based on the premise he had no mental health issues which ignored what the expert had stated in the report and the finding he had

family was contrary to what Judge Simpson had previously found in the 2013 decision.

8. Ms Jegarajah argued the FTT Judge erred by not considering whether someone with the Appellant's health issues would be able to follow the complex steps identified in paragraph [142] of her decision and by attaching no weight to the medical evidence the FTT Judge had failed to properly consider whether the Appellant would be able to travel through checkpoints to meet his relatives or co-operate with the Iraqi Embassy to obtain either a passport or laissez passer.
9. Mr Wain opposed the application and submitted the expert evidence did not give any reasons for suggesting there was a short-term risk of suicide and noted there were no failed suicide attempts. The FTT Judge had considered the report but rejected the conclusions because following the guidance in HA (expert evidence, mental health) Sri Lanka [2020] UKUT 00111 the report had been prepared without reference to either the Appellant's prison or general medical records. The FTT Judge gave reasons for rejecting the expert evidence in paragraphs [117] and [141] making the point the expert should not take the Appellant's case at its highest without supporting evidence. Furthermore the FTT Judge found the Appellant was not receiving therapy and then listed all medication taken and found they were accessible in Baghdad. The FTT Judge concluded there was no risk of suicide, so it was not necessary to consider the appeal under article 3 ECHR. Mr Wain further submitted that whilst Ms Jegarajah had made submissions about what the FTT Judge said in paragraphs [157] and [158] this was not something raised in the grounds of appeal, but in any event the FTT Judge had rejected any suggestion there was a risk self-harm and suicide risk.
10. With regard to access to documents the FTT Judge recorded in paragraph [146] the Appellant had access to extended family in Baghdad through one of his cousins and consequently the FTT Judge was satisfied she could depart from the 2013 finding about the Appellant not having any family and that he would then have support to obtain the necessary documentation (CSID or INIS) and pass through checkpoints because he came from Baghdad and would therefore be able to obtain his documents. In addition, although he was a minor when he left Iraq there was nothing in SMO(2) that suggest the process for obtaining documents was any different especially as he previously had an ID and a reference number.

## **DISCUSSION AND FINDINGS**

11. Permission to appeal had been granted on a limited basis as set out in the grant of permission.
12. Issues for me to consider in this application are as follows:
  - a. Whether the FTT Judge erred by not giving consideration to the Appellant having suicidal thoughts, his evidence of self-harm and being on constant suicide watch.

- b. Whether the FTT Judge erred in her approach to the level of family support in Iraq and how that would assist him to obtain documents and pass through checkpoints. In granting permission Upper Tribunal Judge Lane found “the judge was manifestly entitled on the evidence to find that the appellant would have the assistance of family members on return to Iraq”.
13. The FTT Judge noted the medical evidence between paragraphs [77] and [80] of her decision and referred to a letter from the prison dated 15 October 2015 and then a report from Dr Mihaylov dated 25 March 2023.
14. Ms Jegarajah argued the FTT Judge’s approach to the expert evidence was flawed. Mr Wain submitted that the FTT Judge followed the approach in HA and her findings and approach could not be faulted.
15. In discounting the report the FTT Judge noted no medical records were provided to the expert despite the Appellant being registered with a GP since 2022 and being on medication for his mental health.
16. Dr Mihaylov is qualified to give an opinion and the FTT Judge did not challenge his qualifications but concluded, for the reasons given in her decision, that as the report was prepared based on what he had been told without reference to any medical evidence, little weight should be attached to the report. The FTT Judge criticised Dr Mihaylov’s starting point which was “I have assumed that what the Client had told me during the interview was true and that the evidence I had access to was true”.
17. Dr Mihaylov’s findings included the fact “the main stressor that perpetuated his state of depression was due to his uncertain immigration status” and presented with symptoms that point to an additional diagnosis of post-traumatic stress disorder and “deportation was likely to increase his suicidality exponentially and the short-term risk of complete suicide appears to be quite high... he already seems to be on the verge of ending his life.”
18. In assessing whether the FTT Judge erred in placing no weight on the report I have considered the report itself and sought to identify on what basis Dr Mihaylov reached his conclusions. The basis of his assessment was him observing the Appellant first hand and included “objectively observable behaviour as well as the thoughts and ideas the patient shares.”
19. In the past a report such as this may have been accepted at face value but the Tribunal in HA makes it clear that such an approach is open to challenge.
20. The Tribunal in HA made the following findings:

“157 During his evidence, Dr Persaud made the important point that it is often a more straightforward task for a clinician to reach a diagnosis about a physical illness, such as diabetes, than it is in

the case of a mental illness. This point has implications for the obligations of those giving expert evidence in respect of an individual's mental state, whether past, present or predicted. In such cases, the Tribunal will be particularly reliant upon the witness fully complying with their obligations as an expert, as well as upon their adherence to the standards and principles of the expert's professional regulator.

158 Although the duties of an expert giving evidence about an individual's mental health will be the same as those of an expert giving evidence about any other matter, the former must at all times be aware of the particular position they hold, in giving evidence about a condition which cannot be seen by the naked eye, X-rayed, scanned or measured in a test tube; and which therefore relies particularly heavily on the individual clinician's opinion.

159 It is trite that a psychiatrist possesses expertise that a general practitioner may not have. A psychiatrist may well be in a position to diagnose a variety of mental illnesses, including PTSD, following face-to-face consultation with the individual concerned. In the case of human rights and protection appeals, however, it would be naïve to discount the possibility that an individual facing removal from the United Kingdom might wish to fabricate or exaggerate symptoms of mental illness, in order to defeat the respondent's attempts at removal. A meeting between a psychiatrist, who is to be an expert witness, and the individual who is appealing an adverse decision of the respondent in the immigration field will necessarily be directly concerned with the individual's attempt to remain in the United Kingdom on human rights grounds.

160 Notwithstanding their limitations, the GP records concerning the individual detail a specific record of presentation and may paint a broader picture of his or her mental health than is available to the expert psychiatrist, particularly where the individual and the GP (and any associated health care professionals) have interacted over a significant period of time, during some of which the individual may not have perceived themselves as being at risk of removal.

161 Accordingly, as a general matter, GP records are likely to be regarded by the Tribunal as directly relevant to the assessment of the individual's mental health and should be engaged with by the expert in their report. Where the expert's opinion differs from (or might appear, to a layperson, to differ from) the GP records, the expert will be expected to say so in the report, as part of their obligations as an expert witness. The Tribunal is unlikely to be satisfied by a report which merely attempts to brush aside the GP records.

162 In all cases in which expert evidence is adduced, the Tribunal should be scrupulous in ensuring that the expert has not merely recited their obligations, at the beginning or end of their report, but has actually complied with them in substance. Where there

has been significant non-compliance, the Tribunal should say so in terms, in its decision. Furthermore, those giving expert evidence should be aware that the Tribunal is likely to pursue the matter with the relevant regulatory body, in the absence of a satisfactory explanation for the failure.”

21. Ms Jegarajah’s submission is the FTT Judge should not have disregarded the report and I accept that if the Appellant was not registered with a GP then Dr Mihaylov would have had no records to consider and the FTT Judge would then have had to consider the report in isolation. However, in this appeal the FTT Judge noted the Appellant had been registered a GP since 2022 and according to him was prescribed medication by his GP.
22. Dr Mihaylov’s report provided no insight into how long the Appellant had been taking medication and his conclusions set out in paragraph [17] above are not explained and there was no reasoning in the report for why he concluded the short-term risk of complete suicide was quite high against a background of no reported previous suicide attempts.
23. The FTT Judge clearly considered the medical evidence and she gave reasons for rejecting the conclusion at paragraph [86] of her report. She stated:

“There had been no GP records and his opinion was limited to five paragraphs. In the concluding paragraph it stated it would be beneficial for him to stay for treatment but this was beyond his remit as an expert. He was no country expert. Reliance was placed on HA for the lack of GP records and self-reporting”
24. Dr Mihaylov based his findings on an assumption the Appellant’s account was true but the FTT Judge made clear at paragraph [108] that she did not find the Appellant to be a witness of truth and she went on to give detailed reasons for that conclusion. The fact Dr Mihaylov approached his assessment on the basis the Appellant’s account was true further undermined the weight the FTT Judge attached to the report.
25. I therefore find that the FTT Judge gave adequate reasons for rejecting the medical evidence and that finding then fed into the third ground of appeal raised by Ms Jegarajah.
26. Upper Tribunal Judge Lane made clear the FTT Judge’s findings on the Appellant having family was open to her and the error of law related to paragraphs [12-19] of SMO(2) relating to how a returning Iraqi can access ID documentation.
27. The Appellant came from Baghdad but previously resided in Mansour which is in Baghdad. Ms Jegarajah argued his age and the previous finding in 2013 should have been the starting point but Upper Tribunal Judge Lane concluded the FTT Judge’s findings about his family in Iraq were open to the FTT Judge. Having made the findings above about the medical

evidence I find no merit in Ms Jegarajah's submission that the assessment of the Appellant's ability to obtain documents was flawed.

28. Following the guidance in SMO(2) the Appellant would have to obtain either a passport or a laissez passer. On his own evidence he has family in this country who could assist with that process and in considering the situation the FTT Judge made clear she relied on the background evidence and the findings in SMO(2). These findings can be found between paragraphs [148] and [156] and thereafter the FTT Judge considered the Appellant's position.
29. The FTT Judge concluded he had extended family (upheld by Upper Tribunal Judge Lane) and went on to find at paragraph [158]:

"I find that the appellant if he cooperates with the Iraqi embassy will be likely to be granted a passport and if not a laissez passer. Family in Iraq will be able to meet him at the airport with a copy of the 1957 registration. He will be accompanied by a relative through government checkpoints and he will be able to obtain the CSID or more likely INID in his home registration area. This will provide him with permanent identity and with this he will be able to source work."

30. I am satisfied that the FTT Judge followed the approach set out in SMO(2) and given my other findings on Ms Jegarajah's submissions I find that the FTT Judge reached a conclusion that was open to her in paragraph [159] of her decision.
31. I therefore find there is no material error in the FTT Judge's decision.

### **Notice of Decision**

There was no error in law. The original decision shall stand and the appeal is dismissed.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (512008 /269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

Deputy Judge of the Upper Tribunal Alis  
Immigration and Asylum Chamber

**30 August 2024**