



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

Case No: UI-2024-002454

First-tier Tribunal No: PA/55129/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 19<sup>th</sup> of November 2024**

**Before**

**UPPER TRIBUNAL JUDGE LANDES**

**Between**

**R M Q**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms Dirie, Counsel, instructed by Shawstone Associates  
For the Respondent: Ms Nwachuku, Senior Home Office Presenting Officer

**Heard at Field House on 26 September 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

**Background**

1. The appellant, a national of Iran of Kurdish ethnicity, appeals, with the permission of Judge Austin, the decision of Judge Raymond promulgated on 14 April 2024, who dismissed his appeal against the respondent's decision of 2

August 2023 to refuse his claim for international protection made on 11 September 2022. The appellant was accepted to be a minor (17) at the time he claimed asylum, but had turned 18 before the decision was made.

2. The appellant's case was that he would be at risk on return both because he was wanted by the Pasdar and because of his sur place activities. The appellant said he only attended school until the age of 7/8 and then began to help his father on the family farm. The Pasdar would harass villagers for crops and money and in July 2022, the Pasdar started trying to take the appellant's father's livestock without payment when the appellant was in charge of them. The appellant began to shout, and his father came out and was shot by the Pasdar in the leg. The appellant's family made arrangements for him to leave Iran. Once in the UK, the appellant said that he was politically active, posting materials on Facebook and attending one demonstration at the time of asylum interview. He had attended more by the time of the appeal hearing.

### **Alleged errors of law**

3. The grounds allege four errors of law:
  - (i) **Mibanga error** - it was said that the judge only considered the medical evidence of Dr Shortt who diagnosed the appellant with PTSD, after he had adopted an "adverse position" on the appellant's credibility. The detailed rule 24 response averred that the report was referred to at [60] and [79] when the judge was considering the substance of the appellant's claims, and that the judge specifically engaged with Dr Shortt's opinion about the appellant's memories being impaired. In any event, it was averred that Dr Shortt had made no supportive findings in relation to the appellant's credibility, and nor had the expert made positive findings following consideration of physical evidence or offered a comprehensive analysis connecting the appellant's injuries to his claimed experiences;
  - (ii) **Bare plausibility** - it was said that the judge had relied on speculative findings as to how the Iranian authorities would act when finding that if what the appellant had said was true, his village would have been destroyed. The rule 24 response averred that these inferences were reasonably drawn and made with reference to the appellant's own background evidence and to expert evidence. The judge's approach was said to be consistent with the guidance in Y v SSHD [2006] EWCA Civ 1223 at [25] - [27] and there were other comprehensive findings made against the appellant;
  - (iii) **Illegal exit** - it was said that the finding was made in a vacuum. The appellant was a child of Kurdish ethnicity and of limited education, close to conscription age. It was unlikely he would have been allowed to exit and the judge had simply speculated that the appellant had obtained a passport. The rule 24 response noted that the points as to why the appellant would not have been allowed to exit had not been made in the skeleton argument, nor did they feature in the expert evidence. The appellant left for Turkey, where he would not have needed a visa if he were a passport holder, and this pointed to there being no impediments to the appellant's departure from Iran;
  - (iv) **Sur place activity** - it was said that the judge had not properly engaged with the substance of caselaw and the CPINs. It had not been suggested that the appellant had not attended the protests or that he was not the person in the Facebook pictures. A friend had helped the appellant set up

his account, but once set up, he was able to manage it himself. It was unfair to suggest that someone else was responsible for the entirety of his online activity and that the appellant had help setting up an account did not mean that his engagement was not genuine. [81] failed to engage with the case law; the appellant was actively participating in an anti-regime protest. Due to the appellant's Kurdish ethnicity, illegal exit, lack of military service and status as a failed asylum seeker, further investigations would be made and the appellant's Facebook account and his tagged pictures on other's accounts would be discovered. The judge had ignored the appellant's evidence that he would not delete his Facebook account and had asked the wrong question. Even if the appellant's sur place activity was contrived, he would be at risk.

The rule 24 response averred that the appellant himself admitted that his posts had been provided by his friends. It was explained why the grounds of appeal were simply rearguing the appellant's case. The judge's reasoning should be considered as a whole and the judge had made very damaging findings throughout about the appellant's credibility. The judge was under no requirement to accept that the appellant would not delete his Facebook account.

### **Submissions at the hearing**

4. Ms Dirie pointed me to [84] where the judge had come to his overall conclusion and that it was only after that he considered Dr Shortt's evidence at [85]. Whilst the judge had referred to the medical evidence at [79], that was after his finding at [77] that the core account was a complete fabrication. There was no challenge to the methodology of the report and paragraph 12.8 was the critical part. The evidence needed to be looked at as a whole. I put to Ms Dirie that the report could not be taken as saying any more than that the appellant's mental health condition was consistent with his account, but she submitted that the judge had not critically engaged with the medical report and had considered it as a final thought.
5. As far as plausibility was concerned, whilst the judge's conclusions may have been supportive about how the regime generally acted, one could not conclude because the worst did not happen that the appellant was not telling the truth. It was known for example that the regime was corrupt. The judge had taken matters a step too far.
6. The appellant had never suggested he had left legally. Ms Dirie agreed with me that in this case it would probably make no practical difference to what would happen to the appellant on return as he would be returning as a failed asylum seeker without his own passport.
7. Considering ground 4, her point was that even an opportunistic degree of sur place activity could still succeed. The appellant was clearly visible attending protests wearing a high visibility vest, there was live streaming, he had 2000 Facebook friends, and his posts were gaining traction. There was nothing to suggest that the Iranian authorities distinguished between genuine and contrived political opinion. [81] did not engage with the point that the appellant's posts may already have come to the attention of the Iranian authorities.
8. Ms Nwachuku said that she could not add a great deal to the very detailed rule 24 response provided by her colleague Mr Parvar. In respect of grounds 1 to 3 she would add only that it was not the expert's job to assess credibility (ground 1)

and that the judge's principal findings on credibility did not rest on what was said to be the plausibility point, rather the judge did not accept that the appellant alone would have attracted the hostility of the authorities (ground 2). Considering ground 4, people were not honest and did things to make their case stronger; the judge had looked at matters in that light. The appellant was illiterate, had needed his friend's help, and had no previous political profile in Iran. It should be noted that the Facebook account was not in the appellant's correct name. There was nothing wrong in the judge's finding that the Facebook account would not attract the attention of the authorities. The judge had given proper consideration to the appellant's case and to the caselaw guidance and had explained clearly and adequately why there would be no risk to the appellant.

## **Discussion and analysis**

### **Ground 1- Mibanga error?**

9. The medical evidence relied upon by the appellant was the report of Dr Shortt dated 19 October 2023. Dr Shortt described his interview with the appellant who related nightmares about travelling to the UK in a boat and waking up fearful of drowning, flashbacks of clashes with the Pasdar in Iran, being fearful of police services in the UK, fearing going outside, and having thoughts and dreams about his boat journey to Italy when he believed he was going to drown. The doctor concluded at paragraph 12.2 that the appellant's presentation was consistent with his experience of developing PTSD and the development of PTSD *"is as a result of his experiences in Iran and the UK. His immigration status and lived experience as an asylum seeker has produced a negative impact upon his mental health as he navigates the immigration process."* He continued at paragraph 12.8 *"Mr Q...s continued experience of PTSD remains an indication, in my opinion, of the validity of his diagnosis which has developed from his traumatic experiences. I find, therefore, that his account of the stress that he has experienced in Iran and his subsequent development of mental health problems are plausible given my further psychiatric assessment."* Dr Shortt considered and rejected that the appellant might be feigning his symptoms, in the course of such conclusion noting that it was not his position to conclude on the appellant's credibility (paras 12.13 - 12.15).
10. The judge found at [77] that the appellant's core account of a confrontation with the Pasdar was a complete fabrication and consequently he entered the UK as an economic migrant [78]. He had deliberately concealed the details and chronology of his journey and entry into the UK [79]. The judge then continued to make findings about sur place activity before specifically having regard to the appellant's mental health condition at [85] in the context of whether he could obtain or access medical care in Iran. *"I have had regard to the mental health condition of the appellant found by Dr Shortt to consist of Post-Traumatic Stress Disorder (PTSD) caused by the claimed experiences in Iran that Dr Shortt accepted, but which I have found to be a complete fabrication."* He continued *"Further, whilst I note that the mental health condition of the appellant is said by Dr Shortt to also have been caused by the immigration status, and his lived experience as an asylum seeker which has produced a negative impact upon his mental health as he navigates the immigration process. I have noted that the presence of mental illness among asylum seekers cannot be regarded as exceptional (KH (Afghanistan) v SSHD (2009) EWCA Civ 1354), in a present context where I have found that his claimed confrontation with the Pasdar is a fabrication, and therefore not the cause of his mental health condition."*

11. It is right as set out in the rule 24 response that the judge did mention Dr Shortt's report before [85]. He evidently appreciated it was relied upon [8], recognised that the appellant was to be treated as a vulnerable witness because of his PTSD diagnosis (which, I observe, can only have come from Dr Shortt's report, although the judge did not explicitly say so) [43], and referred to the appellant having told Dr Shortt about his family having been harassed by the Iranian authorities [60]. When evaluating the significance of the appellant having given different dates for his arrival in the UK, the judge considered Dr Shortt's conclusions that the appellant's memories were impaired through trauma [79]. However, although the judge must evidently have considered Dr Shortt's report and recognised its significance when evaluating whether the appellant's memory was impaired, or whether an inconsistency in memory was significant, the judge nowhere evaluated the significance of Dr Shortt's opinion that the appellant's mental health condition developed at least in part from traumatic experiences in Iran. Ms Dirie is right that the judge did not obviously engage with the report in that respect.
12. Mr Parvar in the rule 24 response refers to the case of MN v SSHD [2020] EWCA Civ 1746. He quotes from paragraphs [121] [2] and [5] but it is instructive to consider the whole of paragraph [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") [20]; 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.”

13. On reflection, I should have been more cautious in saying to Ms Dirie that Dr Shortt’s opinion was merely consistent with the appellant’s account. Contrary to the position taken in the rule 24 response, I consider it clear that the psychiatrist’s opinion was more positive than that. Whilst recognising that it was not his position to conclude (my underlining) on the appellant’s credibility, he said he had conducted a critical and objective analysis of the injuries and/or symptoms displayed and he considered that the appellant’s account of the problems he had experienced in Iran and subsequent development of mental health symptoms were plausible (again my underlining) – see the quotes at paragraph 9 above. The doctor’s opinion was therefore positively supportive of the appellant’s account (see (3) of the quote from MN above), and so should have been taken into account by the judge on a holistic assessment of credibility (see (1) from the quote above). Indeed, Judge Raymond recognised that Dr Shortt’s opinion was positively that the appellant’s PTSD was caused at least in part by the appellant’s experiences in Iran (see [85] as quoted at paragraph 10 above).
14. I have considered the case of S v Secretary of State for the Home Department [2006] EWCA Civ 1153 where the decision was saved because, although it looked as if the judge had only considered the medical evidence after coming to his credibility conclusions, in fact he had made it clear that he had expressly taken into account the evidence relied on and had referred to the parties submissions which referenced the medical report. In this case there is no obvious general consideration of the evidence, in fact the way the judge considered the report at [85] highlights that although he there considered the report in terms of what the appellant said to the doctor and whether the appellant was a vulnerable witness, he had not previously considered it in terms of evidence potentially supporting the appellant’s credibility.
15. The other reason the judge’s decision was saved in the case of S was because in Mibanga the injuries described were said to be extraordinary in their severity and nature and the medical evidence so powerful and extraordinary as to take the case into an exceptional area. The rule 24 response seeks to distinguish this appeal from Mibanga on a similar basis, but it is evident from the cases summarised by the Court of Appeal in MN that doctors may equally have a valid opinion on whether psychiatric injuries are supportive of the appellant’s account ([121] [4]).
16. It is not right to say that the grounds do not aver that the psychiatrist made supportive findings in relation to the appellant’s credibility; they do – see the first sentence of paragraph 5 of the grounds and the quote from [84] of the decision at paragraph 6, [84] being the point at which the judge recognises that the psychiatrist’s opinion was supportive of the claimed causation of the appellant’s mental health problems.
17. In conclusion, the judge did not take a holistic approach to credibility, including the medical evidence. He made his findings on credibility before considering the medical report. This was an error of law.

## Ground 2 - plausibility

18. The judge did not take a bare plausibility approach. He first explained that the nature of the targeting by the Pasdar was such as would have left the village

unable to exist as a viable economic community over time; indeed the appellant said for the first time in evidence that people were being forced to leave the village [60]. The judge explained that the objective material highlighted forced evictions and expropriation of rural land from Kurdish people [64]. That being so the judge found it incredible that such a claim would not have constituted a core element in the appellant's narrative from the outset, and he found it telling that the appellant gave no account of other similar thefts apart from vague assertions [61] - [62]. The judge considered that it followed that it was implausible that it would only have been the appellant's family who experienced problems if the villagers had had a violent stand-off against the Pasdar [63]. The judge relied on background material and the appellant's own expert report for the violence used by the Pasdar to suppress dissent [66], [67], and it was in this context, relying again on the appellant's expert report [68] that the judge found that the incident related by the appellant would have been seen as a public manifestation of defiance against the authorities. The judge considered that the appellant appreciated the incredible nature of the scenario he described and so sought to play down whether the Pasdar were put to flight, and in oral evidence suggested there was no fighting, but only an argument and only two Pasdar [69] - [71]. The judge then continued to make findings about the significance of an inconsistency about the arrest warrant [73], the inconsistency about whether the appellant's mother had collected clothes from the house [74] and the appellant providing no credible explanation of why he had lost touch with his family [75] - [77].

19. The judge did not make speculative findings about how the Iranian authorities would act as asserted in the grounds. All he was doing was considering whether the appellant's account was consistent with background material and in that light considered the significance or otherwise of apparent inconsistencies, or omissions from the appellant's account. The judge here was doing exactly what he should have been doing, namely considering the appellant's account for internal and external consistency. There is no stand-alone error of law in this respect although of course the failure to consider the medical evidence holistically is likely to have had a general impact on other credibility findings.

### Ground 3 -Illegal exit

20. The respondent had not accepted that the appellant had left Iran illegally because the account about his being of adverse interest to the authorities had been rejected. The judge adopted much the same approach at [78]. As the rule 24 response comments, the factors mentioned in paragraph 12 of the grounds were not referred to in the skeleton argument or in the expert evidence. There is nothing to indicate that there was a separate argument about illegal exit. The judge made no error in his analysis save as far as his failure to consider the medical evidence holistically impacted generally on his credibility findings. There was no separate error.

### Ground 4 - sur place activity

21. There are two points to this ground. The first is the contention at paragraph 19 of the grounds that the judge ignored the appellant's evidence that he would not delete his Facebook account (see [44] of the decision). The difficulty the appellant faces is that the judge found very definitively that the appellant had a merely opportunistic degree of sur place activity [83]. This is not challenged as such, although I appreciate that the judge's other credibility findings must impact on his conclusions as to sur place activity. Given that the judge found that the appellant's activities were opportunistic, there would be no reason not to expect

the appellant to delete his Facebook account. On the judge's findings, the posts are not evidence of a genuine political opinion.

22. The second and more substantial point is that deleting the appellant's profile would not mitigate the risk due to the online network the appellant had built up and the judge had failed to apply caselaw and guidance correctly.
23. However the judge correctly directed himself to the law at [82] and explicitly reminded himself that a person who had a merely opportunistic degree of political activity could still attract the hostility of the authorities upon return [83].
24. Having given himself those correct directions, the judge found that the appellant's Facebook activity was conducted on his behalf by others and that he would not be able to read posts made under his name. He was very largely not personally acquainted with people with whom his posts were associated [80]. The judge concluded that the internet pages had been manipulated for the appellant by third parties [83]. It is said that it is unfair to suggest that someone else was responsible for the entirety of the appellant's online activity, but this is simply seeking to reargue the case. On those facts the judge was entitled not to be satisfied that the appellant would attract the wrath of the authorities upon return. The judge did, contrary to Ms Dirie's suggestion in submissions, make a finding that it was extremely unlikely that the Iranian authorities would have already picked up on the Facebook posts [83]. The appellant has a lot of Facebook friends as Ms Dirie points out and the friends appear to tag each other on the photographs of demonstrations, but the judge was only given a snapshot of the appellant's Facebook download history (posts, check ins and videos only and for the period a few weeks after the decision until the date of hearing, a period of just under six months). The posts even for that almost six-month period are relatively limited beyond photos of and comments on demonstrations, and there is nothing to evidence a wider engagement on social media, for example following other groups, such that the appellant would self-evidently and obviously have a "social graph" so that the judge's conclusion that he would not already have come to the attention of the authorities could be said to be irrational or perverse. The facts in the case of the appellant in XX (P)AK, sur place activities, Facebook) Iran CG [2022] UKUT 23 are not on "all-fours" with this case.
25. Of course, the judge's conclusions on the appellant's sur place activities are affected by the judge's assessment of his credibility, but there is no stand-alone error of law.

## **Conclusions**

26. In ASO (Iraq) v Secretary of State for the Home Department [2023] EWCA Civ 1282 the Court of Appeal described the question of immateriality as whether [43] *"it is clear on the materials before the F-tT any rational tribunal must have come to the same conclusion. If that is clear, then any error of law would be immaterial, and the appeal should fail."* The Court of Appeal later in their judgment described the question as *"whether, on the evidence which was before the F-tT, any rational tribunal would be bound to reject A's claim."* [57].
27. Bearing in mind the trenchant findings of the judge, it might well have been that he would have reached the same result even if he had taken properly into account the report of Dr Shortt when deciding on credibility. However, it is not clear on the materials available to the F-tT that any rational tribunal would have come to the same conclusion when analysing and deciding credibility. In



particular, bearing in mind the expert's opinion of the plausibility of the appellant having suffered trauma in Iraq, even an adverse finding on the appellant's account of what had happened with the Pasdar might be more nuanced, and this would in turn feed into the assessment of whether the appellant's attendance at demonstrations and social media activity more generally was or was not contrived.

28. It follows that the decision must be set aside as the error I have found pleaded as ground 1 was a material error. Given the way credibility findings permeate the whole, I consider nothing can be preserved.
29. Having considered the case of Begum (remaking or remittal) Bangladesh [2023] UKUT 46 and the terms of paragraph 7.2 (b) of the Practice Direction, I consider that the nature and extent of the judicial fact-finding will be such that it is appropriate to remit the case to the First-Tier Tribunal.

### **Notice of Decision**

**The judge's decision contains errors of law and is set aside with no findings preserved.**

**The appeal is remitted to the First-Tier Tribunal at Hatton Cross to be heard by another judge.**

**A-R Landes**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**14 November 2024**