



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

Case No: UI-2024-003519

First-tier Tribunal No: HU/57460/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 26<sup>th</sup> of November 2024

**Before**

**UPPER TRIBUNAL JUDGE BLUNDELL**

**Between**

**AM**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Mair, instructed by ASR Advantage Law Ltd  
For the Respondent: Mr Parvar, Senior Presenting Officer

**Heard at Field House on 13 November 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 him. Failure to comply with this order could amount to a contempt of court. I make this order because this is a claim for international protection.**

**DECISION AND REASONS**

1. The appellant appeals with the permission of Judge Swaney against the decision of Judge Le Grys, dismissing his appeal against the respondent's refusal of his renewed claim for international protection.

## **Background**

2. There is a lengthy history to this case. It suffices for the present to note as follows. The appellant arrived in the United Kingdom in November 2017 and claimed asylum, asserting that he was at risk because he had revealed to the Iraqi security services that the healthcare company he worked for in the IKR was involved in passing off cheap Indian medication as more expensive German medication. He maintained that senior officials were involved in this illegal practice and that he was in danger from those individuals and from the security services as a result of his whistleblowing.
3. The appellant's claim was refused by the Secretary of State and an appeal against that decision was dismissed by Judge Bell on 15 October 2018. The appellant made further submissions. Asylum was refused again. A second appeal was dismissed by Judge McKinney on 17 September 2021. The appellant made further submissions again, and the respondent refused asylum for a third time on 30 September 2022.
4. It was against that decision that the appellant appealed to the First-tier Tribunal. His appeal was heard and dismissed by Judge Thapar on 5 October 2023 but that decision was set aside by Deputy Upper Tribunal Judge Skinner and the appeal was remitted to be heard afresh by a judge other than Judge Thapar. So it was that the appeal finally came before Judge Le Gry's ("the judge"), who heard it on 7 June 2024 and dismissed it in a decision which was issued on 12 June 2024.

## **The Decision of the First-tier Tribunal**

5. The decision of the judge is detailed, spanning as it does some 71 paragraphs and eleven pages of single-spaced type. What follows is merely an outline of the judge's analysis.
6. At [4]-[8], the judge noted the relevant background. He observed that the substance of the appellant's protection claim was not accepted by the respondent, and that the appellant asserted that his mental health was such that his return to Iraq would be in breach of the ECHR.
7. At [9]-[12], the judge dealt with a number of preliminary issues. One such issue was the judge's decision (made with the concurrence of the Presenting Officer) that he should treat the appellant as a vulnerable witness in compliance with the Joint Presidential Guidance Note No 2 of 2010 in light of the expert evidence given by a Consultant Psychiatrist, Dr Nuwan Galappathie.
8. The judge went on to record that the appellant had been present at the outset of the hearing but had excused himself shortly thereafter, Ms Mair having confirmed that it was not her intention to call the appellant as a result of Dr Galappathie's opinion that he was not fit to give evidence.
9. At [13]-[14], the judge carefully narrowed the issues in dispute between the parties and, in doing so, he noted that he was required to determine (amongst other issues) whether he should, as a result of further evidence, depart from the factual findings reached in 2018 and 2021.
10. At [17]-[25], the judge gave himself a series of meticulous self-directions on the law applicable to the protection and ECHR limbs of the appeals, together with a

direction about the effect of Devaseelan [2003] Imm AR 1 in a case such as the present. At [27]-[39], the judge considered and summarised the decisions of Judge Bell and Judge McKinney. At [40]-[48], under the heading 'New evidence', the judge considered whether the additional medical evidence upon which the appellant relied, including a further report from Dr Galappathie, provided a proper basis for departing from the conclusions of Judge McKinney. He did not accept that the medical evidence provided a proper basis for doing so.

11. At [49]-[54], the judge summarised his overall conclusions on the protection ground of appeal. He did not find the appellant's account of events in Iraq to be credible and he did not accept that he would be at risk on return as a result. As for the argument that the appellant would not be able to obtain Civil Status documentation on return, the judge found that he could be sent his passport and CSID by his family, or that his family could assist him in obtaining new documentation if he returned to Iraq.
12. At [55]-[62], the judge considered the appellant's claim that return would be in breach of Article 3 ECHR as a result of his poor mental health. The judge accepted that the appellant was a 'seriously ill person' but not that the necessary treatment was unavailable or inaccessible for the appellant in Iraq. He noted in any event that the report of Dr Galappathie was more than a year old and that it could not be assumed that his conclusions remained applicable.
13. At [63]-[66], the judge found (drawing on his earlier conclusions) that there would not be very significant obstacles to the appellant's reintegration to Iraq. At [67]-[71], again drawing on his earlier conclusions, the judge found that the interference with the appellant's private life in the UK would be proportionate.
14. So it was that the appeal was dismissed on all grounds.

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

15. Ms Mair advanced four grounds in her application for permission to appeal:
  - (i) The judge failed to apply the Joint Presidential Guidance on Vulnerable Witnesses properly at all;
  - (ii) The judge failed to take material aspects of the medical evidence into account;
  - (iii) The judge failed to take material matters into account in determining that the appellant could obtain a CSID from, or with the assistance of, his family; and
  - (iv) The judge failed to take account of material matters in deciding that the appellant would have access to the necessary medical treatment in Iraq.
16. In granting permission to appeal, Judge Swaney noted that the judge had arguably failed to take account of what was said in the medical evidence about the causes of the appellant's PTSD and that the judge had arguably failed to consider the claim that the appellant's father had died since Judge Bell's dismissal of the original appeal.
17. The respondent responded to the grounds of appeal in a detailed rule 24 notice which was filed on 21 August 2024. She invited the Upper Tribunal to conclude

that there was no legal error in Judge Le Grys' decision and to dismiss the appellant's appeal.

18. In her skeleton argument and oral submissions, Ms Mair elaborated on the grounds in the following way.
19. As to the first, she submitted that the judge had failed to apply the Joint Presidential Guidance Note No 2 of 2010 and AM (Afghanistan) v SSHD [2017] EWCA Civ 1123. The appellant had been treated as a vulnerable witness for the hearing (at which he did not give evidence) but the judge had not applied the proper approach to the assessment of his credibility. The judge's [48] was ambiguous, but assuming that it represented an attempt to apply [15] of the Guidance, the judge had failed to consider each difficulty with the appellant's evidence and to assess whether it could be explained by the appellant's vulnerability.
20. The attempt in the rule 24 response to support the judge's approach only served to highlight the lacuna. The 'generalised' approach of the judge was insufficient and impermissible in law. It was to be recalled that the appellant had only give evidence before Judge Bell and he had not had any medical evidence at that time. Judge Bell had found against the appellant for a number of reasons, one of which was that he had been unable to explain the nature of the charges he was facing in Iraq; that finding certainly required re-assessment in light of the medical evidence now available.
21. As to ground two, Ms Mair submitted that the judge had erred in finding that there was insufficient evidence to suggest that the appellant's mental health problems were caused by his treatment in Iraq. The judge had apparently considered [92] of Dr Galappathie's report but not the other parts of it in which that question was addressed in some detail: [34], [85]-[87] in particular. Dr Galappathie had given specific reasons for concluding that the PTSD was more likely to be attributable to the matters claimed by the appellant, rather than to other factors. The judge had left that out of account in his findings.
22. As to ground four, Ms Mair submitted that the judge had failed to consider what was said by Dr Bluth about the availability of mental health treatment in Iraq. He had concluded that there was no realistic possibility for the appellant to receive the treatment he required but the judge had dismissed the report as being overly generalised on this issue. The judge had also failed to consider that the respondent's CPIN referred specifically to medication which was not available in the applicant's home area of Sulaymaniyah. The CPIN was not a complete answer to the appellant's medical claim, therefore, and the judge had erred in concluding otherwise.
23. As to ground three, Ms Mair submitted that the judge's findings concerning the appellant's family and his ability to secure acceptable civil status documentation were deficient. The judge had merely adopted the previous findings and had not taken into account the claim (reflected in the medical evidence) that the appellant's father had died since Judge Bell's decision. It was also said in the medical evidence that the appellant had not had contact with his family since his father's death. All of that was necessary for the judge to consider but he had failed to do so.
24. Mr Parvar submitted that ground one was premised on a 'massive misunderstanding' of the judge's finding at [48]. The appellant was being 'hyper

critical' of the judge's clear analysis, which included a detailed evaluation of the earlier findings and the medical evidence which was said to cast a new light on those findings. When set in proper context, the judge's [48] made perfect sense. It was appropriate to adopt a reasonably benevolent approach to the judge's analysis and not fixate on one paragraph. Mr Parvar reminded me of the Senior President's recent Practice Statement in that regard.

25. As for ground two, the judge had evidently taken careful account of Dr Galappathie's reports and had concluded that they did not establish that the mental health problems were caused in the manner suggested by the appellant. The doctor had not himself given adequate consideration to other causes which might have brought about the appellant's PTSD and it was for the judge to evaluate the medical evidence in that context. Mr Parvar submitted that it was necessary to be realistic about the medical evidence, which was largely based on the self-reported symptoms of a man who had already been found incredible by two judges. It was a 'stretch' to make the submission that he was not feigning his symptoms. It was also to be recalled that the latest report from Dr Galappathie was quite dated by the time the matter came before the judge.
26. As to ground three, there had been detailed findings made by Judge McKinney about the appellant's contact with his family and he must have had contact with his family because he had learned of his father's death.
27. Ground four bore all the hallmarks of disagreement. The burden was on the appellant to establish a prima facie case that he could not access treatment in Iraq: AM (Zimbabwe) [2022] UKUT 131 (IAC). The CPIN contained an indicative list of examples of the medication which was available; it was not said to be exhaustive, nor had the judge treated it as such. Dr Bluth's report was not comprehensive in this regard and there was no analysis in his report of the medication the appellant was taking and its availability in Iraq. It was more akin to a report on the general infrastructure in Iraq, and it had been open to the judge to prefer the CPIN. Notably, Dr Galappathie had not set out what medication the appellant required. Nor had he spelt out what would happen to the appellant if his specific medication was not available. It was not arguable that the appellant could meet the Article 3 ECHR threshold.
28. Ms Mair made the following points in reply. Firstly, she submitted that it could not be said that [90]-[92] of Dr Galappathie's report were reflected in the judge's [44]. The judge's decision was altogether silent on the other parts of the report which spoke to causation. Secondly, there was limited reason to suspect that there was any other cause for the appellant's PTSD. It was suggested in the respondent's response that he might have suffered a traumatic journey to the UK but there was nothing in the facts to support that contention. Thirdly, the evidence about the death of the appellant's father was to be found at [31]-[32] of Dr Galappathie's report but the judge had not engaged with that in finding that the appellant could call on his family for support. Fourthly, the respondent had accepted that Dr Bluth was a suitable expert. The first Galappathie report would have been available to Dr Bluth. The appellant was not on any medication at the time but the Bluth report shed light on the dearth of treatment in the country, in which respect Dr Bluth agreed with the general tenor of the CPIN in any event.
29. I reserved my decision at the end of the submissions.

## **Analysis**

### Ground One

30. Ms Mair contends by this ground that the judge failed to apply the Joint Presidential Guidance Note on Vulnerable Witnesses (No 2 of 2010). The criticism is not of the way in which the judge took evidence from the appellant; as I have recorded above, the appellant was not called to give evidence before Judge Le Gys, as had been the case before Judge McKinney in 2021. Ms Mair's challenge is instead that the judge failed to discharge the obligation imposed by [15] of the Guidance:

The decision should record whether the Tribunal has concluded the appellant (or a witness) is a child, vulnerable or sensitive, the effect the Tribunal considered the identified vulnerability had in assessing the evidence before it and thus whether the Tribunal was satisfied whether the appellant had established his or her case to the relevant standard of proof. In asylum appeals, weight should be given to objective indications of risk rather than necessarily to a state of mind. [emphasis supplied]

31. In JL (medical reports - credibility) (China) [2013] UKUT 00145 (IAC), having reproduced that paragraph of the Guidance, stated that it "entailed the judge asking herself whether any of the inconsistencies in the appellant's account ... could be explained by her being a vulnerable person." The judge was found to have erred because she had not done so. That decision was cited with express approval at [34] of AM (Afghanistan) v SSHD.
32. Ms Mair submits that Judge Le Grys erred in precisely the same manner as occurred in JL (China). There had during the course of the two previous decisions been found to be a significant number of problems with the appellant's account and the judge was required, Ms Mair submits, to consider each of those difficulties and to consider whether they might not have been attributable to a lack of truthfulness on the part of the appellant, but to his various mental health problems instead. That submission is founded on the latest report from Dr Galappathie in particular. I note that Dr Galappathie was asked a number of specific questions by the appellant's solicitors when he was preparing that report. The eighth question, and its answer, were as follows (at [102]-[103] of the report of 8 March 2023):

[8] Whether there is any impact that the client's mental health especially the PTSD may have on memory, recall and consistency?

[103] In my opinion, given that he reports a significant history of trauma and suffers from recurrent depressive disorder, generalised anxiety disorder and PTSD that his mental health problems, especially his PTSD may have an impact on his memory, recall and consistency. Research has identified that for individuals with PTSD, discrepancies within the individual's accounts were common. It was found that within those with high levels of PTSD, the number of discrepancies increased with the length of time between interviews, with more discrepancies occurring for details peripheral to the account than in details that were central to the account. In my opinion, it should be noted that his PTSD is likely to have significantly affected his memory and that any absence of information or inconsistencies in his history could be related to the trauma of the events that he outlines in the past, rather than such gaps being due to him fabricating any information (Bogner et al, 2007;

Cohen, 2001) . It is notable that victims of abuse and trauma are often unable to place their experiences within chronological order. In addition, the stress that he is experiencing is also likely to significantly impair his memory and thus any inconsistency does not necessarily mean that his past trauma did not occur but instead is likely to represent the severity of the trauma that he has experienced.

33. It is clear that the judge did not consider each of the problems in the appellant's account, as identified by Judge Bell and Judge McKinney, and then consider with the benefit of Dr Galappathie's report, whether each of those inconsistencies could be explained by the appellant's PTSD and other mental health problems. He adopted a more summary, broad-brush approach at [40]-48]. On the facts of this case, however, I am entirely satisfied that the judge was justified in adopting that approach. I say that for the following reason.
34. It is clear that Judge McKinney undertook a very detailed analysis of the appellant's account, and that she identified a significant number of difficulties within it. Judge McKinney was clearly acutely conscious of what was required of her by the Guidance and the authorities, and she made a number of observations about Dr Galappathie's reports throughout her decision. I need not repeat all of those observations, since to do so would unduly lengthen this decision. It suffices for present purposes to reproduce Judge McKinney's ultimate conclusion on Dr Galappathie's opinion, from [94] of her decision:

Taken together with the factors I already highlighted, I find the evidence insufficient to persuade me it was in fact the appellant's mental health issues that were the cause for not only the significant discrepancies and inconsistencies highlighted by Judge Bell, but also the complete failure to mention pertinent facts; such as the grenade attack on his family home, rather than [sic] as Judge Bell found: the appellant not being credible in his account.

35. Judge McKinney heard the appellant's appeal on 17 September 2021. At that time, the latest report from Dr Galappathie was dated 22 June 2021. That report is reproduced in full in the consolidated bundle before me. In common with his other reports, he carefully reproduced the instructions he had received from the appellant's solicitors. The eight question which he was asked, together with its answer, was as follows:

[8] Whether there is any impact that the client's mental health especially the PTSD may have on memory, recall and consistency?

[68] In my opinion, given that he reports a significant history of trauma and suffers from recurrent depressive disorder, generalised anxiety disorder and PTSD that his mental health problems, especially his PTSD may have an impact on his memory, recall and consistency. Research has identified that for individuals with PTSD, discrepancies within the individual's accounts were common. It was found that within those with high levels of PTSD, the number of discrepancies increased with the length of time between interviews, with more discrepancies occurring for details peripheral to the account than in details that were central to the account. In my opinion, it should be noted that his PTSD is likely to have significantly affected his memory and that any absence of information or inconsistencies in his history could be related to the trauma of the events that he outlines in the past, rather than such

gaps being due to him fabricating any information (Bogner et al, 2007 ; Cohen, 2001) . It is notable that victims of abuse and trauma are often unable to place their experiences within chronological order. In addition, the stress that he is experiencing is also likely to significantly impair his memory and that any inconsistency does not necessarily mean that his past trauma did not occur but instead is likely to represent the severity of the trauma that he has experienced.

36. The conclusion expressed by Dr Galappathie in 2021 was therefore in exactly the same terms as that which he expressed in 2023. Judge McKinney undertook a forensic analysis of the earlier report before she reached her conclusions on the appellant's credibility. Given that the 2023 report was identical in this respect to the 2021 report, it provided no proper basis for departing from Judge McKinney's careful analysis of the question posed by [15] of the Guidance. That was what the judge found, and he was necessarily correct to do so. If he had re-evaluated the question in the manner contended for by Ms Mair, he would himself have contravened the Devaseelan Guidelines.

37. Ms Mair levelled particular criticism at Judge Le Grys' [48], which she said was ambiguous and inadequately reasoned. That paragraph was in the following terms:

As such, the additional evidence does not adequately address the earlier concerns. It is of note in this regard that not all of those adverse credibility findings relied on the Appellant's own evidence and ability to recall, for example Judge Bell's findings that the documentary evidence was not reliable. Even taking the Appellant's medical case at its highest, therefore, and effectively excusing all inconsistencies in his own evidence on the basis of his vulnerability, does not fully account for all of the previous adverse findings.

38. I agree with Ms Mair that the meaning of the final sentence is not altogether clear. By that stage, however, the judge had already reached the conclusion that Dr Galappathie's latest report was not capable of overcoming the conclusions Judge McKinney had reached in 2021. As I have said, that conclusion was necessarily correct when set against the relevant content of the two reports from Dr Galappathie. The ambiguity in the alternative conclusion expressed at [48] is immaterial, in the sense that the judge would inevitably have reached the same conclusion without that ambiguity: Detamu v SSHD [2006] EWCA Civ 604, at [14].

39. The first ground of appeal therefore fails.

#### *Ground Two*

40. By this ground, Ms Mair submits that the judge overlooked salient parts of Dr Galappathie's latest report when considering whether the causation of the appellant's accepted PTSD was as claimed.

41. Judge McKinney expressed various concerns about Dr Galappathie's previous reports and their rather loose approach to the important question of causation. At [82] of her decision, for example, Judge McKinney noted that Dr Galappathie had not identified any specific events of such a magnitude which would result in PTSD. In the same paragraph, she noted that Dr Galappathie had failed to particularise what he had described as a 'number of highly traumatic events'.



42. It was undoubtedly for that reason that the appellant's solicitors returned to Dr Galappathie with a copy of Judge McKinney's decision and asked him to provide further opinion on the question of causation. As Ms Mair noted in her submissions before me, that question is addressed at various sections of the latest report. Paragraph 92 of that report answered a lengthy question from the appellant's solicitors, the gravamen of which was whether the doctor considered the PTSD to come from the events alleged by the appellant or whether there might be other causes. That paragraph was in these terms:

In my opinion, Mr Barzan's diagnosis of PTSD is likely to have been caused by his account of experiencing trauma within Iraq and is unlikely to have been caused by other factors such as the news of the death of his father. In my opinion, it is likely that his unstable immigration status and the news of his father will have worsened his mental health symptoms and prevented him from being able to meaningfully recover, but not caused them. In my opinion, his fear of being returned to Iraq where he fears persecution and being killed is effectively maintaining his current mental health problems and preventing him from being able to recover. In my opinion, his account of his father's death as a result of a heart attack towards the end of 2019 or start of 2020 would be consistent with his mental health problems worsening but would not have caused his mental health problems. [emphasis added]

43. Paragraph [58] of Dr Galappathie's 2021 report was in similar terms. The difference between the two paragraphs was the insertion of the 23 words which I have underlined. What Dr Galappathie sought to do, therefore, was to confirm his view that the claimed trauma in Iraq had caused the PTSD and that subsequent events such as the death of his father might have worsened it, but were not causative.
44. As Ms Mair noted, however, [92] of Dr Galappathie's latest report was not the only part of the report in which he tackled the causation of the appellant's mental health problems causation 'head on'. At [34], he noted what had been said by Judge McKinney about the lack of reference in his previous report to a specific event or events which might have precipitated the PTSD. He went on in that paragraph to suggest that the threats made to the appellant and the attack on the appellant's brother were severe enough to cause PTSD, and he then described the symptoms of the PTSD. He returned to the question of causation at [85]-[87] of the latest report but the largest of those paragraphs - [86] - is in essentially the same terms as [34]. Paragraph [85] reiterates the diagnosis and [87] notes that the appellant has been diagnosed with PTSD by the NHS and has received treatment for it.
45. I accept Ms Mair's submission that there is no express reference in the judge's decision to those specific paragraphs of Dr Galappathie's report except [92], which the judge mentioned expressly at his [44]. I do not accept that this criticism discloses an error of law in the judge's careful decision, however. I reach that conclusion for the following reasons:
- (i) I do not consider that it was necessary for the judge to refer expressly to other parts of Dr Galappathie's report on the question of causation. It is clear that Dr Galppathie's [92] was a summary of his views on causation, which took account of what he had previously said in those paragraphs on

which Ms Mair relied. It was not also incumbent on the judge to set out or to consider those additional paragraphs.

- (ii) The language used by the judge at [41] of his decision shows quite clearly that he was cognisant of what was said elsewhere in the report about causation. I note in particular that the judge stated in the final sentence of that paragraph that Dr Galappathie's conclusion was that 'the Appellant hearing news of this event [the attack on his brother] would be sufficient to amount to trauma'. That turn of phrase comes directly from [34] and [86] of Dr Galappathie's report, in which he concluded that the 'news ... is a trauma severe enough to amount to PTSD'. The similarity in the language used by the judge is obviously not a coincidence; it shows that he had studied the report carefully, and that he understood what was said by the doctor about causation.
- (iii) Recourse to what was said in Volpi v Volpi [2022] EWCA Civ 464; [2022] 4 WLR 48 is therefore unnecessary in this case. There is no need to *assume* that the judge took the whole of the evidence into account because there are clear indications in his decision that he did exactly that. In the event that those principles need to be restated, however, I recall that an "appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration." Given the judge's clear focus on the report, which featured prominently in Ms Mair's submissions to him, it is unlikely in the extreme that he overlooked the parts of it which he did not mention expressly.
- (iv) The judge gave clear reasons for rejecting what was said by Dr Galappathie about causation. Having taken Judge McKinney's decision as his starting point, he assessed whether the additional evidence provided proper justification for departing from those findings. Whilst he noted that Dr Galappathie discounted the idea that the death of the appellant's father had caused his PTSD, he considered that the doctor had failed to undertake a detailed consideration of the possibility that the appellant might be feigning or exaggerating his symptoms, and he criticised Dr Galappathie for failing to consider alternative causes beyond those which featured in the appellant's account: [43]-[44]. He also criticised Dr Galappathie for contradictory findings as to existence of prior self-harm, at [38] and [60] of the report, for example. Further criticism was made of Dr Galappathie for failing to consider the credibility made by the first two judges in the FtT.

46. Ms Mair also submitted that the judge had failed to consider the medical records from the NHS, which were said in the grounds to be 'highly corroborative of Dr Galappathie's report and the appellant's core claim'. There is nothing in that criticism of the judge. He was aware that GP records had been adduced before Judge McKinney: [34] of the judge's decision refers. He was aware that the appellant relied on up-to-date medical records: [40] refers. At [42], he considered whether Dr Galappathie's updated opinion 'and the additional medical evidence' should cause him to depart from the earlier findings. The latter reference is evidently a reference to the NHS records. The judge returned to the medical records at [45], noting that they did 'not show the appellant disclosing any suicidal thoughts to other medical professionals'. It is quite clear that the judge considered those medical reports in full, as he would not have been able to make that categorical finding if he had not done so. There was yet further reference to the medical records in the following paragraph, [46], in which the

judge noted that the diagnosis of PTSD was consistent 'throughout Dr Galappathie's reports and the appellant's medical records'. In reaching the findings that he did about the causation of the PTSD, therefore, the judge must have had regard to what was said in the NHS records, just as he had regard to all that was said by Dr Galappathie.

47. The judge was not required to set out large tracts of the medical evidence. Nor was he required to accept what was said by Dr Galappathie merely because it had not been controverted by a differing opinion from another expert. What he was required to do was to approach the expert evidence with appropriate care and to give good reasons for rejecting it, if that was his conclusion: SS (Sri Lanka) v SSHD [2012] EWCA Civ 155, at [21]. In my judgment, the judge amply met both of those requirements.
48. In the circumstances, I consider it to be clear that the judge had regard to the totality of the medical evidence before him. Ground two therefore fails.

#### *Ground Four*

49. I will address the grounds in the order in which Ms Mair took them in her oral submissions. By ground four, she contended that the judge had failed to have regard to relevant matters in deciding that the appellant's Article 3 ECHR 'health claim' should be dismissed. To recap, the judge concluded that the appellant was a seriously ill person but that he had not shown that he would be unable to access the necessary medication in Iraq. Ms Mair submits that the judge overlooked relevant parts of the CPIN and the report of Dr Bluth in reaching the latter conclusion.
50. We had some difficulty in locating the relevant CPIN at the hearing. It was not in the bundle and is no longer available on the internet but I was able to find an archived version of the report which (Ms Mair confirmed) was before the judge: *Iraq: Medical and healthcare provision*, version 2.0, January 2021.
51. The CPIN was said in the skeleton argument to establish that the three medications which the appellant currently takes (Propranolol, Venlafaxine and Mirtazapine) are 'only available' from certain private pharmacies in Erbil and Baghdad. On considering the relevant part of the report, however, it is quite clear that it is not evidence for that proposition. At paragraph 13.1.3 of the report, there is a list of 'some examples of hospitals/clinics that provide mental health treatment and pharmacies/clinics that can provide appropriate medication'. There is then a list of clinics and hospitals, followed by a table of various different medications and *examples* of places in which they might be obtained. As Mr Parvar submitted, that table does not purport to be exhaustive and it certainly does not establish that the appellant would not be able to obtain those three types of tablet in Sulaymaniyah, which is his place of origin in Iraq.
52. Dr Bluth's report is of no assistance in that specific respect. It was written in January 2020 and he did not have any knowledge of the specific medication which the appellant required. Dr Bluth's conclusion ('there is no realistic possibility for the appellant to receive the treatment he needs if he is returned to Iraq') was therefore written in the abstract, and was at odds with the CPIN. It was open to the judge to prefer the CPIN for that reason, and to conclude that the appellant had failed to discharge the burden on him of showing a *prima facie*

case that satisfactory treatment would not be available to him on return: AM (Zimbabwe) [2022] UKUT 131 (IAC); [2022] Imm AR 1021, at [23].

53. Ms Mair expressed some concern in her oral submissions that the judge had lost sight of what was said by Dr Galappathie about the appellant's ability to care for himself, and therefore to access any treatment which he requires on return to Iraq. I do not accept that criticism of the judge. Paragraph [59] of his decision shows that he had the appellant's ability to reach the necessary treatment firmly in mind, drawing as he did on the appellant's family connections in Iraq and his resourcefulness 'in reaching the UK and surviving her for several years.'

### *Ground Three*

54. By this ground, Ms Mair contends that the judge failed to make adequate findings about the appellant's ability to access support from his family in Iraq, and to access the civil status documentation which is required in order to travel or survive there: SMO & KSP (civil status documentation; Article 15) Iraq CG [2022] UKUT 110 (IAC) refers.
55. Judge Bell recorded in 2018 that the appellant had said in oral evidence that he would be able to get his family to send his CSID card from Iraq if he needed it, that they had already sent other documents upon request, and that he would be able to travel from Baghdad to the IKR using that document.
56. In 2021, Judge McKinney identified at [100] of her decision that "the crucial issue is whether the appellant could access his CSID card, Iraqi passport or obtain replacements." She noted that there was a copy of the CSID card in the appellant's bundle, although the location of the actual card was not explained before her: [101]. Judge McKinney noted that the appellant had claimed on the day of the hearing that his father was dead, his brother was in prison, and he had lost contact with his mother. He did not believe that they had the documents anyway. Having recalled that the appellant had lied about other aspects of his claim, and having given herself a meticulous Lucas direction at [104], the judge concluded that there was no reason that the appellant could not contact his mother or a friend in order to send his ID card. Her principal conclusion was therefore that the appellant could be sent the card, either by his mother or a friend. Judge McKinney concluded in the alternative that:

Even if the appellant's mother does not have the appellant's original CSID card, there is no reason why the appellant could not return voluntarily to the IKR and obtain a replacement CSID or INID from his local CSA office; given he has a copy of his previous one which contains all the relevant personal information: including the volume and page reference of the family book. [105]

57. As a further alternative, Judge McKinney considered that the appellant could ask his friend, Aso (who had made a statement in connection with the appeal), to act as a proxy in an attempt to obtain a replacement CSID at the local CSA office. She summarised her conclusions in this way:

In short the appellant has not satisfied me, with his two line supplemental statement served on the day of the hearing, that he no longer has contact with his mother and that she cannot send him his identity documentation or he could not obtain assistance in documenting himself. [107]

58. Ms Mair submitted before the judge that matters had moved on, and that Judge McKinney's conclusions could no longer apply. She submitted that the appellant's father was dead and that he had no contact with his family, including his mother. She drew the judge's attention to the medical evidence, which showed that the appellant had maintained to Dr Galappathie and those treating him on the NHS that these were his family circumstances. The judge's conclusion on these submissions was as follows:

[51] I therefore take the previous findings as my starting point and am not satisfied that there are very good reasons, supported by cogent evidence, to depart from them.

[52] It follows from this that I am not satisfied that the Appellant has shown that he is credible in his claim as to events in Iraq. Furthermore, I am not satisfied that the Appellant has shown that he has lost his documentation and contact with his family. In line with the 2021 decision I am satisfied that he can be sent his passport, CSID (for which he has already provided a photograph), and nationality card. It is also open to him to return voluntarily to the IKR, where his family can assist in obtaining updated documentation.

59. The question posed by Ms Mair's submission, therefore, is whether more was required of the judge in these paragraphs and, in particular, whether the judge was required to mention that the appellant had consistently told Dr Galappathie and other medical practitioners that he had no contact with his family in Iraq.

60. In my judgment, nothing more was required of the judge in these paragraphs. The decision is to be read as a whole, and the judge made it clear that he did not consider there to be any proper reason to depart from the findings reached by Judge McKinney in 2021. That included the conclusion that there was no reason that the appellant could not get in touch with his mother, who could send him his original CSID card. In truth, the medical evidence cast very little doubt on that conclusion. One medical record from February 2022 suggested that the appellant 'had contact with his family in Iraq in the phone' but the rest recorded his claim not to have been in contact with them since 2019. Most of the evidence therefore showed that the appellant, who had lost his 2021 appeal partly because he was able to contact his family, had told Dr Galappathie and others that he was not able to make contact with his family. I do not consider that it was incumbent on the judge to record that the appellant had made that claim to medical staff; he understood that to be the appellant's claim, and he rejected it for the reasons that he gave.

## **Conclusion**

61. I do not consider there to be any merit in the grounds of appeal against Judge Le Grys' decision. This case has been subjected to three rounds of judicial consideration. The judge undertook his evaluation with care, taking proper account of the earlier findings and the subsequent evidence. Ms Mair submits that more reasons might have been given and that the evidence should have been considered in more detail but none of those complaints successfully establishes an error of law on the part of the judge, who was clearly entitled to reach the findings he did, having taken account of the sea of evidence before him. In truth, the appellant's grounds of appeal represent nothing more than island-hopping of the kind deprecated in Page v Chobani [2014] EWCA Civ 5; [2014] FSR 29 and other authorities.

**Notice of Decision**

The appeal to the Upper Tribunal is dismissed. The FtT's decision dismissing the appeal stands.

Mark Blundell

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

22 November 2024