Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02281/2018

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 16th May 2019	**On 06th August 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

HOA
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr. M Mohzam, Burton & Burton Solicitors
For the Respondent: Mr. Bates, Home Office Presenting Officer

DECISION AND REASONS

1. An anonymity direction was not made by the First-tier Tribunal. However, as this a protection claim, it is appropriate that a direction is made. Unless and until a Tribunal or Court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his

family. This direction applies amongst others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.

2. The appellant is an Iraqi national who appealed to the First-tier Tribunal ("F*t*T") against a decision of the respondent dated 7th February 2018 refusing his claim for asylum. His appeal was dismissed for the reasons set out in the decision of F*t*T Judge Gurung-Thapa promulgated on 23rd January 2019.

The decision of the F*t*T Judge

3. The appellant's immigration history is set out at paragraph [2] of the decision. At paragraphs [9] to [14] of the decision, the Judge sets out the background to the appellant's claim for international protection, and the events that he claims occurred that lead to his departure from Iraq. At paragraphs [31] to [90] of her decision, the Judge sets out her findings and conclusions.

4. In support of his claim, the appellant relied upon a report dated 11th October 2018 prepared by Dr R K Sinha. Dr Sinha was instructed by Burton and Burton Solicitors to prepare his report and he identifies the documents that he read before completing his report. No criticism was made of Dr Sinha's specialist expertise and experience in giving a professional opinion.

5. At paragraph [60] and [62] of his report, Dr Sinha concludes that the appellant shows symptoms of "severe depressive disorder" and meets the criteria for a diagnosis of PTSD. His opinion, set out in paragraph [73] of the report is that the appellant has a "cluster of symptoms indicating a severe depressive disorder" and, at [74] that the "diagnosis of depressive disorder is clinically compatible with the appellant's history of mistreatment and having to flee the country in fear of being killed in Iraq". He observes that the clinical picture is that his level of depression is "severe." Under the heading "Fitness to give evidence", at paragraph [97], Dr Sinha expresses the opinion that the appellant is fit to give evidence and he recommends that the appellant be questioned in a gentle, non-confrontational manner. Dr Sinha expresses the opinion

that the appellant should be regarded as a vulnerable witness and additional measures should therefore be put in place to safeguard his well-being as outlined in the joint presidential guidance. He suggests that particular consideration should be given to control the manner of questioning, ensuring adequate breaks are given, and he recommends that the appellant be closely monitored for signs of escalating distress.

6. As set out at paragraph [34] of her decision, the F*t*T Judge was invited to treat the appellant as a vulnerable witness in view of his mental health. The F*t*T Judge referred to the report of Dr Sinha and stated, at [34] and [35]:

> "34. … From the medico-legal report, it stated that the appellant reported psychological symptoms and the conclusion reached by Dr R K Sinha after observations the appellant's mental health indicate a diagnosis of severe depressive episode and PTSD. He stated that the appellant is fit to give evidence and would recommend that he be questioned in a gentle-non-confrontational manner and should be regarded as a vulnerable witness.
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> 35. I have duly treated the appellant as a vulnerable witness. I find that the appellant was able to answer questions put to him in cross-examination which was in my view non-confrontational. There were no signs of distress.

7. The F*t*T Judge summarises her conclusion as to the appellant's claim regarding the events that lead to the appellant's departure from Iraq at paragraph [36] of her decision, before setting out at paragraphs [37] to [59], the reasons for her decision. At paragraph [36], the Judge states:

> "Having considered the evidence in the round, I reject the appellant's claim that he was kidnapped and held for ransom by a group linked to ISIS. I also reject his further claim that his father was killed by the group in revenge for the killing of the two members of the group and the grenade incident. I find that the appellant has invented his claim in order to bolster his claim for asylum."

8. Having found the appellant's account of events not to be credible, the F*t*T Judge went on to consider the risk upon return. She noted, at [61], that the appellant's home area is Kirkuk, and that the appellant claims that in light of the Country Guidance decision in AA (Iraq) -v- SSHD [2017] EWCA Civ 944, it is still not safe for him to return to his home area.

9. The respondent referred the F*t*T Judge to the respondent's Country Policy Information Note ("CPIN"), 'Iraq: Security and humanitarian situation' of November 2018 and the decision of Sir Ross Cranston in Amin -v- SSHD [2017] EWHC 2417 (Admin). The respondent relied, in particular, upon the conclusion that Kirkuk was no longer a contested area, and the SSHD had been entitled to take the realities of the position in Iraq into account. Sir Ross Cranston had accepted that insofar as the position in Kirkuk is concerned, the country guidance cases must give way to the realities. He noted that the objective material establishes that there are apparently still dangers there, but nothing like the position when AA was decided.

10. The F*t*T Judge found, at [64], that from the background material before her, Kirkuk is no longer a contested area and it is therefore feasible for the appellant to return to Kirkuk. The F*t*T Judge went on to consider the ID documentation that would be available to the appellant and considered the appellant's evidence that his national ID card was in Iraq and his Iraqi passport had been lost in Iraq. At [66], the F*t*T Judge rejected the claim by the appellant that his family home was burnt down and his ID card was destroyed. She also rejected his claim that he has lost his Iraqi passport. The F*t*T Judge considered the country guidance in AA, as amended by the Court of Appeal, and the guidance set out in AAH (Iraqi Kurds – internal relocation relocation) Iraq CG UKUT 00212 that sets out the factors are relevant to the ability of an individual to obtain a CSID.

11. For the reasons set out at paragraphs [71] to [75] of the decision, the F*t*T Judge found that the appellant would be able to obtain the necessary documentation including his CSID with the assistance of his maternal uncle. The Judge found, for the reasons set out at paragraphs [79] to [83] that the appellant could in any event, internally relocate to the IKR.

The appeal before me

12. Permission to appeal was granted on 25th February 2019 by F*t*T Judge O'Callaghan, who noted that it is 'arguable' that the F*t*T Judge erred by failing to treat the report of

Dr. Sinha as part of the holistic assessment that is required, in light of the appellant's vulnerability. The matter comes before me to determine whether the decision of the F*t*T contains a material error of law, and if so, to remake the decision.

13. The appellant raises three grounds of appeal. First, the appellant refers to the decision in AM (Afghanistan) -v- SSHD [2017] EWCA Civ 1123 and claims that the F*t*T Judge erred by simply rejecting the appellant's claim and made adverse credibility findings, without giving proper consideration to be mental health of the appellant as set out in the report of Dr. Sinha, and without having any proper regard to the vulnerability of the appellant. The appellant claims that the F*t*T Judge failed to consider whether the discrepancies in the appellants account, and particularly his recollection of dates, are explained by his mental health. The appellant claims that the appellant's account of events was supported by the report of Dr Sinha, and F*t*T Judge failed to undertake a holistic assessment of the evidence before rejecting the appellant's claim, and finding that his account has been invented to bolster his claim for asylum. Mr Mohzam submits that although the F*t*T Judge accepted that the appellant is a vulnerable witness, the F*t*T Judge did not have proper regard to the guidance provided in AM (Afghanistan). He submits that the F*t*T Judge was required to look at the evidence holistically, and in considering that evidence, should have had regard to the fact that the appellant suffers from depression and he has been diagnosed as having suffered a severe depressive episode, and PTSD. He submits that in reaching her decision, the F*t*T Judge failed to have adequate regard to the appellant's vulnerability and appears to have reached a conclusion that the appellant is not a credible witness, before considering the medical evidence and whether that was capable of lending support to his claim.

14. Second, the F*t*T Judge erred in her conclusion that Kirkuk is no longer a contested area, and placed undue reliance upon the decision of Sir Ross Cranston in Amin -v- SSHD, without considering the considerable evidence that was in the appellant's bundle, to show that Kirkuk is still a contested area and unsafe. Mr Mohzam

submits that there was no cogent evidence before the F*t*T capable of establishing that the country guidance is set out in AA, should not be followed.

15. Third, the F*t*T Judge failed to properly consider the guidance in AAH and failed to consider whether the appellant would be able to obtain a CSID within a reasonable time, noting that even if the appellant is in contact with his maternal uncle, that may not be sufficient to obtain his CSID within a reasonable time. Mr Mohzam submits that it would be unduly harsh for the appellant to internally relocate to the IKR.

Discussion

16. In AM (Afghanistan) v Secretary of State for the Home Department [2017] EWCA Civ 1123 guidance was provided by the Senior President of Tribunals. In that case, an expert medical report relating to a 15-year-old asylum seeker indicated that he suffered from moderate learning difficulties. It outlined the ground rules which should be adopted at the hearing to ensure procedural fairness. The Judge ignored the advice, and made adverse credibility findings against the asylum seeker. On appeal, the Upper Tribunal also ignored the medical report, finding that the F*t*T Judge had taken full account of the learning difficulties, and had been entitled to its view. By the time of the hearing before the Court of Appeal, it was common ground that there had been fundamental procedural unfairness, and that the case should be remitted.

17. As to procedural fairness, Sir Ernest Ryder, Senior President of Tribunals noted that the strict rules of evidence do not apply in the Immigration and Asylum Chamber, like they do in the courts. The Tribunal Rules make clear that there is flexibility and a wide range of specialist expertise, which a Tribunal can utilise to deal with cases fairly and justly. The Court of Appeal gave guidance on the general approach to be adopted in law and practice, by the F*t*T and the Upper Tribunal where claims for asylum are made by children, and young people, or indeed other incapacitated or vulnerable persons whose ability to participate effectively in proceedings might be limited. The guidance is designed to ensure that such persons have an effective right

of access to the Tribunal and a voice in the proceedings, so that their claims are fairly determined. At paragraphs [21] and [22], Sir Ernest Ryder stated:

> "21. It is submitted on behalf of the appellant that the agreed basis for allowing the appeal on the merits reflects core principles of asylum law and practice which have particular importance in claims from children and other vulnerable persons namely:
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> a. given the gravity of the consequences of a decision on asylum and the accepted inherent difficulties in establishing the facts of the claim as well as future risks, there is a lower standard of proof, expressed as 'a reasonable chance', 'substantial grounds for thinking' or 'a serious possibility';
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> b. while an assessment of personal credibility may be a critical aspect of some claims, particularly in the absence of independent supporting evidence, it is not an end in itself or a substitute for the application of the criteria for refugee status which must be holistically assessed;
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> c. the findings of medical experts must be treated as part of the holistic assessment: they are not to be treated as an 'add-on' and rejected as a result of an adverse credibility assessment or finding made prior to and without regard to the medical evidence;
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> d. expert medical evidence can be critical in providing explanation for difficulties in giving a coherent and consistent account of past events and for identifying any relevant safeguards required to meet vulnerabilities that can lead to disadvantage in the determination process, for example, in the ability to give oral testimony and under what conditions (see the Guidance Note below and *JL (medical reports – credibility) (China) [2013] UKUT 00145 (IAC)*, at [26] to [27]);
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> e. an appellant's account of his or her fears and the assessment of an appellant's credibility must also be judged in the context of the known objective circumstances and practices of the state in question and a failure to do so can constitute an error of law; and
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> f. in making asylum decisions, the highest standards of procedural fairness are required.
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> 22. Although I agree with these submissions I would like to emphasise that these principles are not an exhaustive or immutable checklist. That said, the principles were not applied properly or at all in the determination of this appellant's claim for asylum either by the FtT or the UT. I recognise that this marks a failure of the system to provide sufficient and adequate protection in the asylum process for the particular requirements, needs and interests arising out of the disadvantages that the appellant has as a highly vulnerable child. There is a consensus that the critical errors arose from the focus on the credibility of the appellant's account and the failure to properly have regard to the objective evidence and to give it priority over the ability of the appellant to provide oral testimony."

18. The F*t*T Judge here, had regard to the appellant's vulnerability as set out in the report of Dr Sinha. At paragraphs [34] and [35], the F*t*T Judge noted Dr Sinha's opinion that the appellant is fit to give evidence, and if he does give evidence, he should be questioned in a gentle non-confrontational manner. The safeguards recommended by Dr Sinha were that the manner in which the appellant is questioned should be controlled, there should be adequate breaks, and that the appellant should be closely monitored for signs of escalating distress. The appellant does not claim in the grounds of appeal, and Mr Mozham did not submit at the hearing before me, that the safeguards recommended by Dr Sinha were not provided for. At paragraph [35], the F*t*T Judge confirms that she treated the appellant as a vulnerable witness, but noted also that the appellant was able to answer questions put to him in cross-examination, and there were no signs of distress.

19. The findings of a medical expert must be treated as part of the holistic assessment and medical evidence can be critical in providing an explanation for difficulties in giving a coherent and consistent account of past events. Here, Mr Mohzam acknowledges that there was inconsistent dates given by the appellant as to the events that were at the heart of the claim, but he submits, the F*t*T Judge failed to consider whether those discrepancies could be explained by the vulnerability of the appellant and his mental health.

20. I have carefully read the report of Dr Sinha, who sets out the background and history of the appellant's claim at paragraphs [1] to [27] of his report. In fact, Dr Sinha states at paragraph [41] of his report that the appellant "*..was oriented to time, place and person and his memory for recent and remote events was good. His speech was coherent and spontaneous, with no formal thought disorder (disorganised speech) evident.*". The appellant's presentation before Dr Sinha appears to accord with the observation recorded by the F*t*T Judge at paragraph [35] of her decision that the appellant was able to answer the questions put to him in cross examination, and that there were no signs of distress.

21. Although it is right that at paragraph [36] of the decision, the Judge notes that she rejects the claim advanced by the appellant, before setting out her assessment of the evidence, that is not to say that the Judge reached a decision before carrying out a careful examination of the evidence. Paragraph [36] is in fact a summary of the conclusion reached by the Judge, before she sets out in the paragraphs that follow, her reasons for reaching that conclusion. The Judge expressly states, at [36], that she reaches her conclusion "*Having considered the evidence in the round…*", and there is nothing in the paragraphs that follow, that indicate that she did not do so. Having made that clear, there is no reason for me to believe that she did not adopt that approach. In fact, having then set out her reasons at paragraphs [37] to [59], the Judge concludes at paragraph [60] by stating "*For the reasons set out above, I do not find the appellant's account to be credible ...*".

22. It is clear that the ingredients of the story, and the story as a whole, have to be considered against the available country evidence, and any reliable expert evidence, and other familiar factors, such as consistency with what the appellant has said before, and with other evidence relied upon. The assessment of an asylum claim and the credibility of an appellant is always a highly fact sensitive task. The F*t*T Judge was required to consider the evidence as a whole. In assessing the credibility of the appellant and the claim advanced by him, the Judge was required to consider a number of factors. They include, whether the account given by the appellant was of sufficient detail, whether the account is internally consistent and consistent with any relevant specific and general country information.

23. Here, the medical evidence did not suggest that the appellant was unable to give evidence, that his ability to recollect events was compromised by his mental health, or that there was some other reason why the appellant might be unable to provide a coherent account of the events that he claims, occurred. The Judge confirms that she has considered the evidence in the round, and it is clear from what then follows at paragraphs [37] to [59], that the Judge considered all the material relied upon by the

appellant including the report of Dr Sinha and other documents that were provided by the appellant to support his claim.

24. In reaching her decision, the Judge noted, at [47], the evidence of Dr Sinha regarding the scars, and considered the opinion of Dr Sinha that the scars are highly consistent/consistent with the attributed causes, but considered that opinion against the account of events relied upon by the appellant as to how and when the injuries were sustained, and other evidence relied upon by the appellant, including a medical report from the Azadi Hospital dated 31st August 2015. In that report it was claimed by Dr Mouamen Hassan Mohammed that he had conducted a forensic medical examination of the appellant at the Azadi General Hospital on 31st August 2015 as requested by the police, and on examination he found that the appellant had "..four toes cut from the right foot..", and that the appellant was *inter alia* in an unstable condition, in a persistent state of fear and anxiety with an inability to concentrate. Having noted the evidence set out in the report of Dr Sinha, the Judge considered his opinion and conclusions, in light of the evidence of the appellant, and other documents relied upon by the appellant. The Judge had the opportunity of hearing the appellant and having his evidence tested, and to consider the evidence of Dr Sinha in the context of other documents relied upon by the appellant. The Judge did not consider irrelevant factors, and the weight that he attached to the evidence was a matter for her. The Judge carefully considered all of the evidence before her in the round and it was in my judgement open to the Judge, following a holistic examination of all of the evidence, to conclude that the appellant's account of events and how he received his injuries, is not credible.

25. As to the Judge's assessment of the risk upon return, it is correct that AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC) as amended by the Court of Appeal in AA (Iraq) [2017] EWCA Civ 944, confirmed that there is a state of internal armed conflict in certain parts of Iraq, involving government security forces, militias of various kinds, and the Islamist group known as ISIL. The intensity of this armed conflict in the so-called "contested areas", comprising *inter alia* Kirkuk, is such that, as a general

matter, there are substantial grounds for believing that any civilian returned there, solely on account of his or her presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) of the Qualification Directive.

26. The Judge here, considered the background material relied upon, and in particular, the respondent's November 2018 CPIN, and found that Kirkuk is no longer a contested area and it is therefore feasible for the appellant to return to Kirkuk. I accept that cogent reasons must be given for a departure from Country Guidance. However, the F*t*T Judge considered whether there was fresh evidence to justify such a departure. The evidence relied on was a CPIN which itself drew on multiple sources of background material and country information to found its conclusion that Kirkuk is no longer afflicted by high levels of violence such as to make return there a general risk contrary to Article 15(c) of the Qualification Directive. That CPIN made clear that ISIS was no longer in control and that there were only sporadic incidents of violence. The Judge noted that in Amin -v- SSHD, Sir Ross Cranston had found that Kirkuk is no longer a contested area, and that although there are apparently still dangers there, that is nothing like the position as when AA was decided. I also note that Court of Appeal has very recently noted in KK (Sri Lanka) [2019] EWCA Civ 172, that a F*t*T judge had not erred in her approach when concluding that new evidence, including a Country Information and Guidance report, justified a departure from an earlier country guidance case when assessing the risks of returning an asylum seeker to Sri Lanka. The Court of Appeal confirmed that the Judge was not required to go through each section of the report in her determination, or to set out a list of positive and negative factors from it.

27. In my judgement it was open to the F*t*T Judge to conclude that Kirkuk is no longer a contested area and that it is feasible for the appellant to return to Kirkuk. Having considered the relevant factors identified in the country guidance decisions in AA and AAH, was it my judgement as to the Judge to conclude that the appellant would be able to obtain the necessary documentation including in the CSID with the

assistance of his maternal uncle. In reaching that decision, the F*t*T Judge was entitled to note that the appellant's uncle has been able to obtain copies of investigation documents, and that the appellant has failed to establish that he would not be able to obtain a replacement Iraqi ID card and/or CSID within a reasonable time, if returned to Iraq. It was also open to the Judge to conclude that in any event, the appellant has the choice of internal relocation to the IKR and that although relocation there will be challenging, it would not be duly harsh. In reaching her decision the F*t*T Judge again had careful regard to the matters set out in AAH, including the support that may be available to the appellant, and also the high unemployment rate.

28. Having carefully considered the appellant's grounds of appeal, I am satisfied that the FtT Judge carried out a careful and holistic examination of the appellant's claim, before reaching conclusions that were open to her. In my judgement, there is no material error in the decision of the F*t*T Judge. It follows that I dismiss the appeal.

Notice of Decision

18. The appeal is dismissed.

19. An anonymity direction is made.

Signed Date 21st June 2019

Deputy Upper Tribunal Judge Mandalia

TO THE RESPONDENT
FEE AWARD

There can be no fee award.

Signed Date 21st June 2019

Deputy Upper Tribunal Judge Mandalia