



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

Appeal Number: UI-2021-000378  
[PA/50573/2021]; [IA/01475/2021]

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 26 September 2022**

**Decision & Reasons Promulgated  
On 10 November 2022**

**Before**

**UPPER TRIBUNAL JUDGE KOPIECZEK**

**Between**

**AA  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr G Lee, Counsel instructed by Turpin & Miller Solicitors  
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure  
(Upper Tribunal) Rules 2008**

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 both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

**DECISION AND REASONS**

1. The appellant is a citizen of Iraq born in 1992. He made an asylum claim in October 2008. That asylum claim was refused but he was given discretionary leave to remain until 11 April 2010 on account of his age. An application for further leave to remain was refused in April 2010. The appellant appealed that decision and his appeal was dismissed by First-tier Tribunal Judge Archer.
2. The appellant made a fresh claim on 9 March 2019. That claim was refused, however, and his appeal came before First-tier Tribunal Judge Athwal at a hearing on 12 July 2021. The appeal on asylum, humanitarian protection and human rights grounds was dismissed.

### ***Judge Athwal's decision-2021***

3. It was argued before Judge Athwal that the appellant's credibility, rejected by Judge Archer in 2010, should be revisited in the light of medical evidence that was not before Judge Archer. That medical evidence, principally, was in terms of the appellant suffering from PTSD and the effect that that had on his memory and cognitive function. Arguments were also advanced concerning the appellant's ability to obtain Iraqi identity documents, namely a Civil Status Identity Card ("CSID"). It was also argued before Judge Athwal that there would be very significant obstacles to the appellant's re-integration in Iraq and that the appeal should be allowed on Article 8 grounds.
4. In a very detailed decision Judge Athwal set out the background and history to the appellant's stay in the UK and considered the *Devaseelan* [2002] UKIAT 00702 guidelines. She considered relevant country guidance as it applied at the date of the hearing before her.
5. At [55] she summarised Judge Archer's findings made in the context of the appeal that was heard in 2010. She noted that Judge Archer found the appellant's account of his father's death inconsistent and that the appellant's account of receiving threatening letters was not reasonably likely to be true. She also noted that Judge Archer found that the appellant had not given a credible account of being a potential victim of a blood feud.
6. Judge Athwal considered what medical evidence there was before Judge Archer as reflected in Judge Archer's decision. At [59] Judge Athwal said that she was satisfied that Judge Archer was aware that the appellant might be suffering from psychological issues in 2010 but there was no medical evidence before him that the appellant was suffering from PTSD or that his mental state had an impact on his recollection or cognitive function. She said that there was no explanation as to why a report from a psychologist or psychiatrist was not provided in 2010.
7. In relation to the medical evidence before her, Judge Athwal quoted in detail from a psychiatric report dated 21 March 2021 from Dr Abdul Latifi. She also referred to evidence from the appellant's GP.

8. At [63] Judge Athwal said as follows:

“63. Dr Latifi discussed the Appellant’s past psychiatric history and recorded the following: ‘According to his GP, [the Appellant] suffers with insomnia, depression, PTSD and suicidal thoughts. He has been referred to the Adult Mental Health Team (AMHT) due to scoring high on the depression scale and talking of persistent suicidal thoughts and impulsive deliberate self-harming behaviour. He was seen by a psychiatrist on 28<sup>th</sup> January 2021 who diagnosed him with depression and started him on antidepressant Mirtazapine 15mg at night. Prior to that he was assessed by Talking Space Plus on 9<sup>th</sup> December 2020 but due to his symptoms of PTSD, low mood and high risk he was deemed not suitable for their service, their recommendation was referral to Adult Mental Health Team for psychiatric assessment. He gets support from Asylum Welcome and he has been referred to Refugee Resource for counselling.’”

9. Judge Athwal went on to say that having set out the GP’s findings, the GP did not state that the appellant was suffering from PTSD and at [64] also said that it was not clear from the evidence whether the organisation called Talking Space diagnosed the appellant with PTSD. However, she also said that the Adult Mental Health Team (“AMHT”) report did not make a diagnosis of PTSD in that report, aspects of which Judge Athwal quoted. After quoting further from Dr Latifi’s report Judge Athwal said as follows:

“67. I have considered Dr Latifi’s report and note the following:

- i. The medical evidence provided does not contain a diagnosis of PTSD from a medical expert. Dr Latifi states that there was an earlier diagnosis by the GP or another healthcare professional. That is not supported by the evidence I have seen, as set out above.
- ii. He has not diagnosed the Appellant with PTSD and there is no reference to any tests or questionnaires completed by Dr Latifi. He states that the Appellant fulfils the criteria of PTSD because he witnessed the murder of his father and because he lost his mother and sister in Turkey. Dr Latifi was provided with the refusal letter dated 17.9.2020 that contains extracts from Judge Archer’s decision and his finding that the Appellant’s account of what occurred in Iraq is not credible. Dr Latifi does not address the possibility that the Appellant has not told the truth about his father’s death in his report and whether, if that was not true he would still be of the same opinion.
- iii. He stated that PTSD can have an adverse effect on memory and that it can cause problems with transferring short-term to long-term memory and the formation of short-term memories. He does not give his opinion on what impact that would have on the Appellant in 2010 and his ability to remember events from 2008.

For all of these reasons I attach little weight to Dr Latifi’s report.”

10. At [68] she said that although she had every sympathy for the appellant she was not satisfied that the appellant was suffering from PTSD in 2010 and that it impacted his recollection of events that occurred in Iraq. She

said that Judge Archer had been made aware that the appellant had psychological issues but there was no evidence provided as to what those issues were. There was no explanation before Judge Athwal as to why that evidence had not been obtained. She said that the medical evidence that had now been provided stated that the appellant reported a worsening in his mental health in 2015 and the primary reason was his precarious immigration status and the fact that his relationship with his fiancée ended. She went on to state that “I have not been provided with a diagnosis of PTSD” and thus she said that she attached little weight to Dr Latifi’s report. She concluded at [69] that the appellant had not established that PTSD in 2010 had had an impact on his memory and cognitive function at that time and accordingly there was no reason for her to depart from Judge Archer’s findings.

11. Judge Athwal went on to consider the risk on return to Iraq. She found that the appellant would not be at real risk on return on the basis of having a pro-ISIL political opinion imputed to him.
12. So far as the appellant’s family in Iraq is concerned, she concluded that the appellant had not provided a credible account of what family he has in Iraq and the contact he has with them. She did not accept that the appellant had lost touch with his family and is without support.
13. She next considered the issue of identity documents and noted the appellant’s evidence that his paternal family live in the KRI (Iraqi Kurdistan) and his father relocated to Mosul. She said that there was no evidence before her to explain why the appellant’s family records would be in Mosul and not the KRI. She repeated that she was not satisfied that the appellant had lost contact with his family. She found that the appellant’s identity could be verified with their assistance and the relevant family records held in the KRI or Mosul accessed, so that replacement identity documents could be issued.
14. She went on to conclude that the mere attendance by the appellant at the Iraqi Embassy in London was not sufficient to discharge his burden of establishing that he could not obtain the relevant identification documents. She concluded that it was possible for the appellant to obtain the necessary documents that would enable him to return to Iraq.
15. In the alternative, she found that the appellant would be able to exercise the option of internal relocation to the KRI.
16. She went on to consider Article 8 of the ECHR, in particular in the context of the appellant’s mental health. She found that there was no evidence that the appellant would be unable to obtain the medication that he is presently receiving (mirtazapine) in Iraq and the evidence did not establish that his mental health would deteriorate to such an extent that there would be very significant obstacles to his re-integration on return. Accordingly, she dismissed the Article 8 appeal.

### ***The grounds and submissions***

17. The grounds are twofold. The first relates to the issue of documentation and the second relates to the medical evidence. In relation to ground 1, the appellant's claim was that he left Iraq in 2008 when he was 15 years of age and there was a real risk that he would not be able to obtain either a CSID or an Iraqi National Identity Card ("INID") either prior to return or within a reasonable time once in Iraq. The country guidance made it clear that in those circumstances the appellant would be at real risk of Article 3 ill-treatment on return. The grounds contend that in relation to Judge Athwal's findings, it was clear from the respondent's guidance that it was not possible to obtain a CSID or INID from the Iraqi Embassy in London. Reference is made to the Country Policy and Information Note ("CPIN") on Iraq dated June 2020, Version 11.0.
18. Furthermore, in *SMO, KSP & IM (Article 15(c); identity documents) Iraq* CG [2019] UKUT 400 (IAC) it was found that replacement identity documents could not be obtained from Baghdad, which is where the appellant would be removed to. Onward safe travel could not be undertaken to the KRI or to other areas of Iraq without such documentation.
19. Furthermore, in this case the appellant had adduced evidence that the relevant office for Mosul in Ninewah had converted to the INID system, and that an INID could not be issued using a proxy. A CSID card was unlikely to be issued from an office where an INID terminal had been installed. Accordingly, even in the context of the rejection by Judge Athwal of the appellant's claim to have no contact with any family members in Iraq, her conclusion that the appellant's identity could be verified with their assistance and the relevant family records held in KRI or Mosul accessed, was at its highest speculative.
20. Even if the appellant's evidence was unreliable, Judge Athwal's conclusions relied on the proposition that it would be possible for a willing and able family member to attend the relevant CSA office in the KRI and that the relevant office was one of those in a "reducing number" that issued CSIDs and that the relevant documentation required for the issuing of a CSID by proxy exists. That would be notwithstanding the evidence of the devastation and high numbers of IDPs in the appellant's home area. It would depend on there being a willing and able family member collecting the CSID and then travelling to Baghdad to give it to the appellant.
21. So far as ground 2 and the medical evidence is concerned, it is argued that Judge Athwal had erred in her approach to the question of whether the appellant had a past diagnosis of PTSD. Dr Latifi referred to GP's records to that effect. The grounds refer to GP's records dated 23 January 2020 and 19 November 2008 (although it does not appear that that evidence was put before Judge Athwal).
22. The grounds argue that Judge Athwal seemingly insisted on sight of the primary sources of the information that was before Dr Latifi,

notwithstanding that Dr Latifi is a psychiatrist approved under Section 12(2) of the Mental Health Act 1983 and is a specialist in forensic psychiatry. The error of law on the part of Judge Athwal is significant, it is argued, in terms of her conclusions that there was nothing to undermine Judge Archer's assessment of the appellant's credibility. It is similarly relevant to the issue of Article 8 and very significant obstacles to integration. That is so particularly in the light of the further evidence of the appellant's history of self-harm, suicidal thoughts and depression provided in the more recent GP's evidence.

23. In submissions Mr Lee referred to the updated decision of *SMO & KSP (Civil status documentation; article 15) Iraq* CG [2022] UKUT 00110 (IAC) and reiterated the matters advanced in the grounds of appeal.
24. It was submitted that the FtJ's decision extrapolated from the limited evidence in concluding that the appellant could obtain the necessary identity documents, notwithstanding that individuals would need to attend an INID office in person. The question arises as to how he would get from Baghdad to Mosul or the KRI with no CSID. He could only get one if a person's home area office had transferred to the INID system.
25. Aside from the extrapolation by Judge Athwal in relation to the appellant's evidence: that he heard when he was a boy that there were family members in the area, family members would not be able to obtain an INID. The question arises also as to how he would get from Baghdad to the KRI in the light of the decisions in *SMO*. He could not even get to central Baghdad.
26. As regards the medical evidence, it was submitted that the FtJ's decision did not take into account that Dr Latifi referred to having seen evidence from the GP that the appellant had suffered from PTSD historically. Furthermore, the present diagnosis of PTSD was highly relevant and helps to establish that there was an underlying condition at the time of the first appeal before Judge Archer. In addition, although Judge Athwal was entitled to refer to any deficiencies she found in the evidence of Dr Latifi, her conclusions are undermined by what Dr Latifi actually said in relation to the appellant suffering from PTSD.
27. Mr Melvin relied on his Rule 24 response. It was submitted that the conclusions of Judge Athwal were open to her on the evidence provided. Judge Athwal's conclusions need to be considered as a whole, particularly in the context of Judge Archer's findings.
28. So far as the medical evidence is concerned, that was considered in detail by Judge Athwal. Mr Melvin argued that there was no medical evidence of PTSD in 2010. It may be that aspects of Judge Athwal's decision could be confusing with reference to [66] and [67] in terms of what evidence of PTSD was found by Dr Latifi, but the point is the appellant was not found to be credible in his account. That has an impact on Dr Latifi's conclusions. Judge Athwal was entitled to conclude that there was no

evidence that mirtazapine was not available in Iraq and thus the appellant would be able to obtain treatment for his mental health. Any conflict between [66] and [67] in Judge Athwal's decision were not material.

### ***Assessment and Conclusions***

29. I deal with ground 2 first. It is clear from Dr Latifi's report, as quoted by Judge Athwal at [66], that Dr Latifi found that the appellant was suffering from PTSD. His report states that:

"It is also my opinion that due to the trauma [the Appellant] experienced in Iraq and the threat of removal to the scene of trauma; he fulfils the criteria for Post-Traumatic Stress Disorder (PTSD) classified as F43.1 under the ICD-10 classification of Mental and Behavioural Disorder".

30. However, at [67] she went on to state that having considered Dr Latifi's report: "The medical evidence provided does not contain a diagnosis of PTSD from a medical expert". She continued that Dr Latifi "has not diagnosed the Appellant with PTSD and there is no reference to any tests or questionnaires completed by Dr Latifi". However, it is plain that Dr Latifi did indeed conclude that the appellant was suffering from PTSD, as is evident from his report. It was not correct, therefore, for Judge Athwal to say that he has not diagnosed the appellant with PTSD or that the medical evidence provided does not contain a diagnosis of PTSD from a medical expert. Dr Latifi's expertise has not been disputed.
31. It may well be that Judge Athwal was entitled, otherwise, to point out that "there is no reference to any tests or questionnaires completed by Dr Latifi", but that does not address the fact that Dr Latifi did, contrary to Judge Athwal's conclusions, diagnose PTSD. Similarly, whilst Judge Athwal was entitled to point out that the appellant's account of what occurred in Iraq was not credible, and that account underpinned in part Dr Latifi's conclusions, again, to state that Dr Latifi did not find that the appellant was suffering from PTSD is incorrect. Likewise, in relation to Judge Athwal's conclusion that Dr Latifi did not address the possibility that the appellant had not told the truth about his father's death, Judge Athwal said that "Dr Latifi does not address the possibility that the Appellant has not told the truth about his father's death in his report and whether, if that was not true he would still be of the same opinion." That sentence seems to indicate that Judge Athwal did in fact recognise that Dr Latifi found that the appellant was suffering from PTSD. If that is so, Judge Athwal's conclusions in this distinct respect are not only inconsistent but contrary to the evidence of Dr Latifi.
32. Judge Athwal's findings in relation to Dr Latifi's report led her to conclude that she should attach little weight to it. Whilst Judge Athwal may have been entitled to point out deficiencies in Dr Latifi's report, it is clear that

her conclusion that there was no diagnosis of PTSD by Dr Latifi is incorrect. I am satisfied that in this respect Judge Athwal erred in law.

33. That, it seems to me, is a sufficient basis from which to conclude that her decision must be set aside.
34. There is also merit in what is said about the conclusions by Judge Athwal that Dr Latifi was, in effect, wrong to find that there was evidence of PTSD historically. Dr Latifi plainly referred to records there were before him. It would have been open to Judge Athwal to direct that she be provided with the medical records that were before Dr Latifi and reviewed by him. That could have been done at the hearing or by way of a further hearing or provision of evidence and submissions after the hearing.
35. I also consider that there is something to be said for the point that a diagnosis of PTSD in the present day may reflect on the question of whether a person was suffering from PTSD some years earlier if that PTSD is said to arise from events arising prior to the time of the first assessment by Judge Archer of the appellant's credibility.
36. All this in turn reflects on the question of the appellant's ability to obtain the necessary documentation for return to Iraq in the light of the up-to-date country guidance. Furthermore, it has an impact on the issue of internal relocation, should it arise. It also reflects on the question of whether there are very significant obstacles to re-integration on return to Iraq with reference to Article 8 if the appellant is suffering from PTSD.
37. So far as ground 1 is concerned, I also consider that there is merit in the arguments advanced on behalf of the appellant to the effect that Judge Athwal's assessment of the extent to which the appellant would be able to obtain the necessary documentation on return to Iraq is contrary to the decisions in *SMO*. That conclusion in relation to ground 1, however, is not essential for the finding that Judge Athwal erred in law in her assessment of the appellant's appeal.
38. In the light of my conclusion that Judge Athwal erred in law, her decision must be set aside. Having considered the Senior President of Tribunals' Practice Statement at paragraph 7.2, the appropriate course is for the appeal to be remitted to the First-tier Tribunal for a hearing *de novo* before a judge other than Judge Athwal with no findings of fact preserved. That of course does not mean that Judge Archer's conclusions are affected in relation to the appellant's credibility, that being a matter for assessment by the First-tier Tribunal in the light of the *Devaseelan* guidelines.

### **Decision**

39. The decision of the First-tier Tribunal involved the making of an error on a point of law. Its decision is set aside and the appeal is remitted to the First-tier Tribunal for a hearing *de novo* before a judge other than First-tier Tribunal Judge Athwal, with no findings of fact preserved.



A.M. Kopieczek  
Upper Tribunal Judge Kopieczek

30/10/2022