



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

**Appeal Number UI-2022-003996  
PA/55236/2021; IA/15804/2021**

**THE IMMIGRATION ACTS**

**Heard at George House,  
Edinburgh  
On the 23 November 2022**

**Decision & Reasons Promulgated  
On the 01 December 2022**

**Before**

**UT JUDGE MACLEMAN**

**Between**

**BELAN SABAH AHMED**

Appellant

and

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

Respondent

For the Appellant: Mr I Halliday, Advocate, instructed by Latta & Co,  
Solicitors

For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. FtT Judge Rea dismissed the appellant's appeal by a decision dated 23 July 2022.
2. The appellant sought permission to appeal to the UT on 4 grounds, headed:

- 1, failure to take into account material considerations in unduly harsh assessment;
  - 2, failure to take into account material considerations in very compelling circumstances assessment;
  - 3, erroneous interpretation of *HA* (expert evidence; mental health) Sri Lanka [2022] UKUT 111 (IAC); and
  - 4, failure to take into account appellant's personal circumstances in Iraq when assessing whether he is likely to be able to obtain a CSID.
3. FtT Judge Aziz granted permission on the view that ground 1 disclosed arguable failure to take account of evidence of the appellant's wife's mental health issues, but the grant was not restricted.
  4. The decision of Judge Rea says at [19]:

... there is evidence from Dr Ifaf Asghar, a Chartered Clinical Psychologist, dated 12th January 2022, regarding the state of the Appellant's mental health. I am satisfied that Dr Asghar is suitably qualified and experienced to express an expert opinion on this issue. Dr Asghar assessed the Appellant over VCT and found that he is currently presenting with symptoms of depression and anxiety. Dr Asghar records that the Appellant reported experiencing suicidal thoughts and Dr Asghar expresses the view that there would be a detrimental effect on the Appellant's mental health if he had to return to Iraq. It appears from Dr Asghar's report that he has not had access to the Appellant's GP's notes and records and hence does not have the overview of assessment and treatment that these would afford. Having regard to the recent guidance given by the Upper Tribunal in the case of *HA* ... I find that I can attach only limited weight to the report for this reason.
  5. The same reasoning appears in the FtT's conclusions at [40] on "very compelling circumstances" over and above the statutory exceptions to deportation.
  6. Mr Halliday said that there was before the FtT evidence also from the family GP, which corresponded with information before Dr Asghar.
  7. Dr Asghar's report is dated 12/1/22. At 2.1 it lists documents to which he had access. Item 2.1.8 is a letter from the family GP "dated 16/5/16"[?]. The respondent's bundle includes a letter from the family GP dated 27/10/20. This is brief, but it is consistent with the information considered in the report.
  8. Mr Halliday submitted along the lines of ground 3: ...
    10. A psychological report addressing the appellant's mental health was before the Tribunal (Appellant's bundle, at p.12). The report notes that the appellant suffers from severe depression and severe anxiety, that he attempted suicide by hanging whilst in prison, and that return to Iraq would have a detrimental effect on his health (at [4.6], [4.8], [4.10], and [5.5.1]).
    10. FtTJ Rea notes, at [19] of his determination, that the expert has not had access to the appellant's GP's notes and records. Having regard to the

guidance given by the Upper Tribunal in *HA FtT* Rea finds that he “can attach only limited weight to the report”. He appears to consider himself bound to afford the report only limited weight due to the lack of reference to GP records. This is an error of law. This error is repeated at [40].

11. *HA* is not authority for the proposition that an expert report which does not refer to GP records must be given little weight. Rather, the case is authority for the proposition that an expert must provide an objective, unbiased opinion on matters within their expertise. This includes making the Tribunal aware of matters that might adversely affect the validity of their opinion (such as GP records). Where an expert's opinion differs from the GP records, they should provide an explanation for this. The expert in that case had failed to do this, instead misrepresenting what the GP records showed (see [122] to [130]). The production of a misleading report is a significant matter to be taken into account when deciding the weight to place upon that report (per [119]).

12. The report in the appellant's case was not misleading. It was consistent with the evidence from the appellant's GP at p.294 of the Respondent's bundle which confirms a history of depression and prescription of antidepressants. In the absence of any finding that the expert had failed to comply with his obligations to the Tribunal, FtTJ Rea materially erred in law by considering himself bound to place little weight on the expert report.

9. Mr Mullen, fairly and correctly, accepted that the appellant's analysis of the FtT's decision and of *HA* is accurate; the Judge's reasons for giving the report limited weight could not stand; this could not be extricated from his other findings; and the case should be remitted. He made no concession on ground 4, but he did not ask for the terms of the remit to be restricted.
10. The position regarding the expert report and GP records in the present case is not analogous to *HA*.
11. Mr Halliday asked for such findings as were favourable to the appellant to be preserved. It was agreed that any such findings should be taken as a starting point, subject to any developments in the evidence. Representatives did not consider that any further specification is necessary.
12. It was mentioned that the appellant's wife is due shortly to have their child. That is not a matter which would necessarily change the outcome of the appeal, but it is one of which the respondent and the FtT should be made aware in good time.
13. Under section 12 of the 2007 Act, and under Practice Statement 7.2, the decision of the FtT is set aside. It stands as a record of what was said, and to the limited extent stated above. The case is remitted to the FtT for a fresh hearing, not before Judge Rea.
14. No anonymity direction has been requested or made.

H Macleman

24 November 2022  
UT Judge Macleman

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### NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A **"working day"** means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.