



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

Case No: UI-2023-001450

First- tier Tribunal No: PA/55234/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

31<sup>st</sup> October 2023

**Before**

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**BOH**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Joseph, Counsel, instructed by NLS Solicitors  
For the Respondent: Ms S Rushforth, Senior Presenting Officer

**Heard at Cardiff Civil Justice Centre on 5 October 2023**

**Order Regarding Anonymity**

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

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

**DECISION AND REASONS**

## **Introduction**

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge G Wilson (“the judge”), promulgated on 22 March 2023. By that decision the judge dismissed the Appellant’s appeal against the Respondent’s refusals of his protection and human rights claims.
2. The Appellant is a citizen of Iraq and is of Kurdish ethnicity. His claim can be summarised as follows. He was a Peshmerga fighter between 2013 and 2018. In 2015 he was attacked by ISIS and his home in Kirkuk was attacked in October 2017 by the Popular Mobilization Force. The Appellant then fled to a location in the IKR for his safety. Whilst there he received threats from the PMF that he would be killed if he returned to Kirkuk. Whilst in the IKR the Appellant took part in demonstrations against the PUK and KDP, as a result of which he was arrested and tortured. His home in the IKR was attacked in January 2020, following which he came to the United Kingdom. His fear on return was based on threats from the PUK and KDP and from ISIS. In addition and as a result of claimed medical conditions, the Appellant relied on Article 3 and a risk of suicide. The Respondent did not accept the veracity of the account.

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

3. The judge’s decision is fairly detailed. Having set out the relevant background and summarised the evidence, the judge directed himself to the correct approach in the assessment of credibility at paragraphs 16–18.
4. At paragraph 23 the judge referred to various documents which the Appellant had provided in support of his claim. Those documents were to be assessed in light of the well-known principles set out in Tanveer Ahmed. It was for the Appellant to prove the reliability of this evidence, having regard to the full evidential picture in the case.
5. For reasons set out thereafter, the judge did not accept that the evidence was reliable. Little, if any, weight was placed on the documents. The judge expressed

concerns with a medical report provided by a Consultant Psychiatrist, Dr S Zafar, and placed little weight on the conclusions. Overall, the judge was not satisfied that the Appellant was at risk on return to Iraq for the reasons put forward, or at all. The judge also concluded that there was no Article 3 medical risk. The appeal was accordingly dismissed on all grounds.

### **The grounds of appeal**

6. The grounds of appeal are threefold. Firstly, it is said that the judge erred by reducing the weight placed on the documents simply because the Appellant was not cross-examined at the hearing. Secondly, it is said that the judge effectively required corroboration and applied too high a standard of proof. Thirdly, it is said that the judge erred in his assessment of the psychiatric report.
7. Permission to appeal was granted on all grounds.

### **The hearing**

8. At the hearing Mr Joseph relied on the grounds of appeal. His concise submissions do him real credit. He was realistic in respect of their merits, recognising the need to consider the judge's decision sensibly and holistically. He nonetheless fought the Appellant's corner admirably and I am very grateful for his high degree of professionalism.
9. Ms Rushforth submitted that in all the circumstances there were no errors, or at least no material errors in the judge's decision.
10. At the end of the hearing I announced to the parties my conclusion that there were indeed no material errors in the judge's decision and that reasons would follow. My reasons for the conclusion are now set out below.

### **Conclusions**

11. At first glance ground 1 had superficial merit. The judge did state at various points that the weight he attributed to certain aspects of the evidence was reduced as a

result of the absence of cross-examination. On my first reading of the papers it seemed as though this reduction was erroneous. However, as fairly recognised by Mr Joseph, the true position was somewhat more nuanced. In respect of the Appellant's claimed property and the photographs of damage made thereto, the reduction in weight as a result of the absence of cross-examination was only one reason set amongst a number of others. These included the absence of any evidence to link the property shown on Google Maps to the actual photographs, the absence of a link between a letter from the local mukhtar to the photographs, and the absence of country information which might have lent a degree of plausibility to the account.

12. In respect of the letter from the ASHTI Organisation for Human Rights, it is true that the author of that letter could not have been cross-examined because he was not in the United Kingdom. However, the primary reason given by the judge for attributing little weight was the fact that the letter had failed to provide any detail as to what the organisation's "investigations" amounted to. The judge was entitled to take this into account. The issue of the lack of cross-examination was at most secondary.
13. In respect of paragraph 26 and the police document, again it would have been impossible for the Appellant's brother to have been cross-examined (he was in Iraq), but the point being made in that paragraph is that the letter was not based on any investigation undertaken by the authorities, but purely on what the brother had told the police. It was open to the judge to reduce the weight attributable to this evidence for that reason.
14. Stepping back and reading the judge's decision sensibly and holistically and having regard to what I have said above, I am satisfied that whilst the references to the absence of cross-examination raised superficial concerns, in substance the central reasons put forward by the judge for rejecting the various items of documentary evidence were sustainable. There are no material errors of law here. This deals with ground 1.

15. In respect of ground 2, I am satisfied that the judge did indeed apply the correct lower standard of proof to the evidence before him. Further, I am satisfied that the judge was not in fact requiring corroborative evidence; rather the judge assessed the corroborative evidence which had in fact been provided by the Appellant and found it to be wanting.
  
16. In respect of ground 3, and having read the medical report for myself, I conclude that the judge was entitled to raise significant concerns and ultimately to place little weight on the conclusions stated. What is said at paragraph 28 was sustainable: the scarring report did not provide significant support to the Appellant's case. More importantly, at paragraph 49 the judge deals in detail with the psychiatric report. Amongst the reasons provided is the fact that despite being provided with GP medical records (which made no mention of any mental health problems), the author of the report did not engage with those records or explain in any way why his own assessment appeared to have had no link to the Appellant's history of interaction with medical professionals thus far. We know from HA (Sri Lanka) that this issue is important when medical reports are written, particularly when dealing with mental health conditions.
  
17. At the hearing I queried whether even if the judge had placed significant weight on that medical report, how that might have been material to the Article 3 medical claim given the very high threshold concerned. Mr Joseph realistically accepted that it probably could not have met those exacting standards. He was right to take that position. On any view, the medical report could not have conceivably permitted the Appellant to succeed on the Article 3/suicide issue. Mr Joseph did however indicate that if the judge had erred in the approach to the medical report, it might have had an impact on the assessment of the Appellant's evidence with reference to paragraph 22. This submission, whilst potentially attractive, in fact has no real substance. It is clear that the Appellant was not subjected to very much, if any, questioning at the hearing itself. Thus, even if he did suffer from PTSD, the fact that his oral evidence was minimal (if there was any at all) meant that there

would have been no causal link between the report and the assessment of any oral evidence.

18. In light of my conclusions on the judge's approach to the reliability of the Appellant's overall account, there are no material errors of law. It is not asserted that there were any errors of law in respect of other matters not related to credibility and in any event, I find that there are none. It must follow that the appeal to the Upper Tribunal is dismissed.

**Notice of Decision**

**The decision of the First-tier Tribunal did not involve the making of any errors of law and that decision shall stand.**

**The appeal to the Upper Tribunal is accordingly dismissed.**

*H Norton-Taylor*

**Judge of the Upper Tribunal  
Immigration and Asylum Chamber**

**Dated: 19 October 2023**