IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004179

First-tier Tribunal No: PA/52680/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

13th November 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

AS
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr J Azmi, Counsel; instructed by Solomon Solicitors
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

Heard at Field House on 30 October 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) 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 (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Thapar dismissing his appeal against the refusal of his protection and human rights claim under Article 3 ECHR. The decision was promulgated on 1st August 2023.

2. The Appellant applied for permission to appeal against that decision. Permission was granted by First-tier Tribunal Judge F E Robinson, who accepted that it was arguable that the judge had failed to properly consider the Appellant's credibility, including taking into account the Appellant's mental ill-health. Permission to appeal was granted on all grounds.

3. At the close of the hearing, I have reserved my decision, which I shall now give. I find that the Grounds of Appeal demonstrate material errors of law in the decision for the following reasons.

4. In respect of Ground 1 and the submission that the judge has made adverse credibility findings on an issue that had been accepted by the Respondent in her decision, as the grounds note, Mr Azmi is correct in arguing that the Respondent had accepted that the Appellant is an NGM supporter (see paragraph 30 of the refusal). I note that although credibility was the first item to be dealt with in the schedule of issues framed in the appeal skeleton argument, there was no invitation to reopen the assessment of his being at least a supporter in the review of the ASA or in the Respondent's review. At the same time, I note that the refusal puts the Respondent's position as no higher than that he is a mere "supporter". Nonetheless this was a status which the Respondent herself believed was established as reasonably likely on the evidence before her, and therefore given that the Appellant would not have anticipated that he would need to persuade the judge of this issue as it was not identified in the agreed schedule of issues before the judge, the Respondent's acceptance that the Appellant was a supporter should have formed the starting point for the judge's assessment, as the Respondent had already interviewed the Appellant and accepted he was a supporter and had not withdrawn this concession in court. The findings at paragraph 17 of the decision, where the judge criticises the Appellant's level of detail, goes to his status as an NGM supporter and thus I find these criticisms were not open to the judge, at least not without first noting the Respondent's stance which the judge omitted to mention and then giving reasons for disagreeing with the Respondent's accepted view.

5. Turning to the next few points within Ground 1, I note that the grounds allege that the Appellant is a vulnerable person and that his barrister advised that he would not be called to give evidence in light of the medical evidence provided detailing his mental health conditions and vulnerability. This was noted explicitly by the judge at paragraph 6 but without any difference in approach then accorded to it. A chief complaint made in the grounds is that the judge failed to have regard to the Joint Presidential Guidance Note No. 2 of 2010: Child, vulnerable adult and sensitive adult guidance (see paragraph 10.3, for example) which meant that the Appellant's vulnerability due to his mental health meant that the judge needed to treat with caution criticism of the Appellant's account, for example that it was vague or lacking in detail, and given also that was not being called to give evidence and could not therefore answer queries that the judge had in her mind. It is possible that he may not have provided as much detail as a non-vulnerable adult might. As stated at paragraphs 13 and 14 of the Joint Presidential Guidance, a Tribunal should consider whether or not to apply weight upon the factor of vulnerability itself and consider whether to allow for possible different degrees of understanding by the Appellant, compared to those that are not vulnerable and where there were clear discrepancies, to consider the

extent to which the vulnerability or sensitivity was an element contributing to that discrepancy or a lack of clarity etc.. Given the judge's failure to follow the Joint Presidential Guidance, I find that the assessment of credibility will necessarily be legally deficient. Had the guidance been applied, the judge may not have reached findings that she did such as identifying a lack of detail in material such as not knowing the name of a neighbour or failing to describe the person who had been following the Appellant in September 2019, by way of example. Thus, a material error is identified in these further arguments pointing to vulnerability and the assessment of the Appellant's credibility.

6. In respect of the second ground and the failure to assess the evidence from the standpoint of his being a person of low profile, the chief complaint here is that the judge found the account not to be credible at all and therefore the evidence of the Facebook posts was deemed to be unrelated to activism or having a profile or a political opinion, which would come to the attention of the Iraqi authorities. Given that the judge ought to have adopted the starting point from the refusal letter that the Appellant was an NGM supporter as identified in Ground 1, the same follows in respect of the Facebook materials (notwithstanding that the judge's observations as to the lack of a timeline provided by the representatives is in fact correct and one that was open to her).

7. In respect of the third ground and the judge's failure to give adequate reasons in relation to the Appellant's ability to obtain an ID through family members, I do not find that there is a material error in this regard as the inability of the Red Cross to assist the Appellant in tracing his family does not establish that he is unable to obtain his ID from Iraq. The point in short is that the Red Cross letter simply states that they are unable to assist *anyone* at present, not that they are unable to trace the Appellant's family per se which perhaps would have demonstrated that he cannot now obtain his ID for safe return to Iraq.

8. Turning to Ground 4 and the assessment of Dr Dania Herbert's evidence and the implication of torture, I do not find that there is an error per se in the assessment or observation of what Dr Herbert raised; however, I do find that the judge ought to have also considered the evidence from the Consultant Psychiatrist as to the possible causes of the Appellant's mental health condition which could be seen under paragraph 10 of the Consultant Psychiatrist's report under the heading "Possible Causes of the Appellant's Mental Health Condition", which included the fear and threat that he had witnessed in Iraq, his father's warnings and receiving threats that forced him to flee the country, his nightmares involving beating, threatening and kidnapping. I do find that there is an error of law in respect of this ground, albeit it not a material one by itself.

9. Turning to the fifth ground and Dr Singh's alleged failure to consider alternative causes of PTSD or severe major depression, it is argued that the findings are contrary to the evidence in that Dr Singh found that the reasons the Appellant gave (for the cause of his poor mental health and his symptoms) were consistent with the symptoms she had observed. It is complained that Dr Singh was entirely aware that the Appellant's immigration status may have caused his poor mental health and she observed this to be a further factor impacting on the same, at page 24 of the Appellant's bundle. Thus it is said, and I accept, that Dr Singh was aware of alternative causes for his poor mental health, but came to her own view of the cause of his poor mental health based on her observations and the Appellant's symptoms. As to Dr Singh's failure to consider the impact of Facebook on the Appellant's mental health, the complaint is that this is not a viable example of an alternative cause of PTSD that the psychiatrist necessarily

would have considered or even should have considered. This submission does seem rational, given that the judge finds that there was no adverse commentary on Facebook in any event (which would have then proven to be a possible cause of the Appellant's PTSD). As to the judge's observations that the Appellant was able to socialise on Facebook, I note, as the grounds argue, that there is a distinction to be drawn between socialising in person as opposed to interacting with articles and posts on Facebook, which would be far less socially challenging for a vulnerable person.

10. The grounds further argue that the judge failed to notice that Dr Singh's opinion was that the current risk of suicidal ideation was very high and he had repeated thoughts of ending his life and is likely to do so if returned (see pages 22, 24 and 26 of the Appellant's bundle). It is said that the Appellant had a past low risk of suicidal ideation but that did not eradicate the current risk or mean that this had not changed. Given the importance of the finding by Dr Singh that the risk of suicide was "very high", I do find that this is a factor which should have been given explicit consideration against the up-to-date evidence by the judge rather than that of the past. In any event, the judge failed to apply the guidance in MY (Suicide risk after Paposhvili) Occupied Palestinian Authority [2021] UKUT 232 (IAC) - pertaining to the proper approach to be taken to those claiming a risk of suicide if removed - the headnote for which reads as follows:

> *Where an individual asserts that he would be at real risk of (i) a significant, meaning substantial, reduction in his life expectancy arising from a completed act of suicide and/or (ii) a serious, rapid and irreversible decline in his state of mental health resulting in intense suffering falling short of suicide, following return to the Receiving State and meets the threshold for establishing Article 3 harm identified at [29] - [31] of the Supreme Court's judgment in AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17; [2020] Imm AR 1167, when undertaking an assessment the six principles identified at [26] - [31] of J v Secretary of State for the Home Department [2005] EWCA Civ 629; [2005] Imm AR 409 (as reformulated in Y (Sri Lanka) v SSHD [2009] EWCA Civ 362) apply.*

11. Finally, in terms of the judge's observation that the Appellant had not been in contact with the GP, I do not find that this is a material error per se given that it is an observation as to his treatment being of a medicated nature, but in any event, Mr Azmi took my attention to telephone consultations in various other instances of contact on 9th November 2022, 30th November 2022 and 8th December 2022 following his last visit to the GP on 29th July 2022, which pointed to the fact that his treatment was ongoing, albeit remotely at times. I also note that the judge did not deal with the observation in Dr Singh's report that therapy and CBT were still required for the Appellant.

12. For all of the above reasons, I find that errors of law have been established in respect of all grounds (save for ground 3) and that the decision contains material errors of law which require it to be set aside in its entirety.

Notice of Decision

13. The appeal to the Upper Tribunal is allowed.

14. The decision of the First-tier Tribunal is set aside in its entirety.

15. The appeal is to be remitted to the First-tier Tribunal to be heard *de novo* by any judge other than First-tier Tribunal Judge Thapar.

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber