Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: LP/00268/2021
UI-2021-001358 (PA/52371/2020)

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre	**Decision & Reasons Promulgated**
On 5 May 2022	**On 28 June 2022**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

YZA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr H Dieu instructed by NLS Solicitors
For the Respondent: Ms S Rushforth, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to Contempt of Court proceedings.

Introduction

2. The appellant is a citizen of Iraq who was born on 20 November 2002. The appellant is from Kirkuk. He is Kurdish and a Sunni Muslim. The appellant arrived in the United Kingdom clandestinely on 29 May 2019 and claimed asylum. He claimed that he was a shepherd and that in October 2018 he was abducted by force by the PMF. He claimed that he was held for five to six months during which time he was beaten and knocked unconscious when he was held in a house in the desert. He was released after his uncle paid a bribe and then, with the assistance of an agent, he came to the UK. He travelled via a number of countries, including Greece, where he claimed he was beaten by the police.

3. On 29 October 2020, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and on human rights grounds.

The Appeal to the First-tier Tribunal

4. The appellant appealed to the First-tier Tribunal. The appeal was heard by Judge C J Woolley on 31 August 2021.

5. Before Judge Woolley, the appellant gave oral evidence and also relied upon two expert reports: first, a report from Dr Zafar (a Consultant psychiatrist) who diagnosed the appellant as suffering from moderate PTSD and also that a scar on his leg was "highly consistent" with his account; secondly, a report from Dr Fatah, a recognised country expert, concerning the risk to the appellant on return to Iraq.

6. In his decision dated 13 September 2021, Judge Woolley dismissed the appellant's appeal on all grounds.

7. In relation to the appellant's asylum claim, Judge Woolley did not accept the appellant's account that he had been abducted by the PMF and that, as a consequence, he had been ill-treated and would be at risk from the PMF on return to Iraq.

8. The judge also dismissed the appellant's appeal under Art 3 of the ECHR based upon any risk to the appellant of returning without appropriate documentation because the judge found that the appellant could obtain a CSID and used so the appellant could safely travel from Baghdad to Kirkuk.

9. Further, in relation to the appellant's mental health, Judge Woolley did not accept that as a result of the diagnosis of moderate PTSD, the appellant fell within Art 3 applying the Supreme Court's decision in AM (Zimbabwe) v SSHD [2020] UKSC 17.

10. Finally, the judge dismissed the appellant's appeal under para 276ADE of the Immigration Rules and Art 8 outside the Rules.

The Appeal to the Upper Tribunal

11. The appellant sought permission to appeal to the Upper Tribunal on three grounds.

12. First, the judge had been wrong to discount Dr Zafar's evidence concerning the scarring on the appellant's leg as being "highly consistent" with his account on the basis that Dr Zafar did not have the expertise to express that expert opinion (Ground 1).

13. Secondly, the judge had wrongly failed to take into account Dr Fatah's view that the appellant was at increased risk on return to Kirkuk because he was a person of interest or wanted by the PMF (Ground 2).

14. Thirdly, the judge had failed properly, or at all, to consider the appellant's claim under Art 3 of the ECHR based upon the impact upon his mental health if he returned to Iraq (Ground 3).

15. On 9 December 2021, the First-tier Tribunal (Judge Feeney) granted the appellant permission to appeal on all grounds.

16. On 16 December 2021, the respondent filed a rule 24 notice seeking to uphold the judge's findings and decision.

17. The appeal was listed on 5 May 2022 at the Cardiff Civil Justice Centre. The appellant was represented by Mr Dieu and the respondent by Ms Rushforth. I heard oral submissions from both representatives.

Discussion

18. I will take each of the grounds in turn.

Ground 1

19. Ground 1 challenges the judge's reasoning and adverse credibility finding by reference to his treatment of the report prepared by Dr Zafar which is at pages 724–743 of the digital bundle.

20. In his report, Dr Zafar diagnosed the appellant as suffering from PTSD of "moderate severity" (see para 8.1). Dr Zafar then went on to deal with the impact upon, and prognosis of, the appellant if returned to Iraq. I will return to this issue in relation to Ground 3 below.

21. In section 7 of his report, Dr Zafar dealt with two scars on the appellant's body.

22. The first is a scar upon the appellant's right leg below the knee which Dr Zafar described:

> "I have considered the Istanbul Protocol in forming my opinion. In my opinion this scar is highly consistent with [the appellant's] account of how it occurred".

23. Then, Dr Zafar dealt with an injury to the appellant's lower left ribs in which he stated:

> "I am not able to comment on the consistency of this injury" as X-ray would be required.

24. Before the judge, the appellant relied upon Dr Zafar's report and his opinion that the scar on the appellant's right leg was "highly consistent" with his account. Within the Istanbul Protocol, an injury that is "highly consistent" is defined as:

> "The lesion could have been caused by the trauma described, and there are few other possible causes".

25. The appellant argued that this evidence was supportive of his claim that he had been injured whilst detained by the PMF in Iraq.

26. In his decision, Judge Woolley did not accept that Dr Zafar's opinion in relation to the aetiology of the scar on the appellant's leg could be relied upon. Judge Woolley dealt with Dr Zafar's evidence in two passages in his decision.

27. First at para 37, Judge Woolley said this:

> "37. Dr Zafar has provided a report on the medical condition of the appellant. Dr Zafar is a consultant psychiatrist and I accept he can be treated as an expert witness in respect of his psychological assessment. He has however provided no evidence of any particular expertise in assessing scar tissue or physical symptoms generally, and this field is outside the areas of competence he describes in 'Outline of Experience'. His comments on the scar tissue must be read with this in mind. He has reviewed the evidence including the respondent's bundle and the witness statement. Dr Zafar rehearses the account which the appellant gave him. Dr Zafar examines a scar on his right leg below his knee which the appellant describes as having been caused while he was held hostage. Dr Zafar concludes that the scar is highly consistent with the appellant's account. There was also an injury to the left lower ribs but Dr Zafar is not able to comment on the consistency of this injury. In his opinion the appellant meets the diagnostic criteria of PTSD, and his symptoms are of a moderate severity. He also meets the criteria for a depressive disorder. He concludes that even if the appellant received appropriate medical and psychological treatment that his condition would not improve as it is highly correlated with the uncertainty of his immigration status".

28. As can be seen, Judge Woolley accepted that Dr Zafar was an expert in relation to mental health issues but not as regards physical injuries such as scarring in order to give an expert opinion on the linkage or cause between the appellant's injury and his account.

29. Judge Woolley returned to Dr Zafar's evidence at paras 53–56 of his decision:

> "53. In support of his claim he has produced evidence about his physical and mental state from Dr Zafar. Dr Zafar has examined the scarring to the

leg and concludes that this is 'highly consistent' with his account. I have already noted that examination of physical injuries appears to be outside the specialty of Dr Zafar, who is a consultant psychiatrist. A more serious objection is that Dr Zafar appears not to have considered the whole claim made by the appellant in his interviews and witness statements, even though Dr Zafar acknowledges that he has received them. Miss Lewis made the valid point that the appellant's account is that he was badly mistreated on his journey from Iraq to the UK. Dr Zafar has not considered this alternative aetiology for the scarring.

54. I can accept that Dr Zafar can be regarded as an expert in psychology. In respect of his findings of moderate PTSD he again however fails to take into account the circumstances of the appellant's journey to the UK. I can be accepted that he had a long and difficult journey. He was maltreated by the agent and by other asylum seekers. He says in his statement that he suffered violence on Greece from the Police (when he says his ribs were broken). He was a minor at the time which would have exacerbated his vulnerability. The appellant made these claims in his evidence supplied to Dr Zafar. These factors are however ignored by him in his report.

55. In approaching the report of Dr Zafar I have regard to the guidance in JL (China) [2013] UKUT 00145 (IAC) which cautions against an expert seeking to reach a conclusion about the appellant's overall credibility. I also note the authority of AAW (expert evidence – weight) Somalia [2015] UKUT 00673 as to the weight I can place on expert evidence that is 'unsupported by a demonstration of the objectivity and comprehensive review of material facts required of an expert'. Such evidence 'is likely to be afforded little weight by the Tribunal'. In AAW it was said that an expert witness who does not engage with material facts or issues that might detract from the view being expressed risks being regarded as an informed advocate for the case of one of the parties to the proceedings rather than an independent expert witness. AAW referred to the guidance given by the President in MOJ & others [2014] UKUT 442 (IAC) which summarised the duties of an expert including: being objective and unbiased, to consider all material facts, to avoid trespass into advocacy, and to provide information and express opinions independently.

56. I find that Dr Zafar's report falls into the category described in AAW. He can be regarded as an informed advocate only. I accept that he has diagnosed the appellant with PTSD but his report does not support the claim of persecution in Iraq in the absence of his consideration of an alternative potential aetiology (although I accept that he does have PTSD which may be relevant in any Article 3 health assessment). I have not accepted that the scarring to the knee is highly consistent with his account as a possible alternative cause has not been considered by Dr Zafar, and he has shown no particular expertise in interpreting scarring".

30. As can be seen, Judge Woolley essentially gave three reasons for not accepting Dr Zafar's evidence. First, Dr Zafar did not have the expertise to give expert evidence on the issue of scarring although he did in relation to the appellant's mental health. Secondly, Dr Zafar had failed to consider the whole of the evidence, in particular the appellant's evidence that he had suffered violence in Greece at the hands of the police and that this may have been a cause of the injury to his leg. Thirdly, Dr Zafar had, in

his report, acted as an “informed advocate” which reduced the force in his evidence.

31. Mr Dieu made a number of points challenging Judge Woolley’s reasoning and conclusion not to place weight upon Dr Zafar’s opinion that the scar on the appellant’s leg was “highly consistent” with his account.

32. First, Mr Dieu submitted that, in effect, the judge had been unfair as the point about Dr Zafar’s expertise in relation to the scarring had not been raised by the respondent either at the pre-hearing stage or before Judge Woolley himself.

33. Secondly, it was clear from Dr Zafar’s report that, although a psychiatrist, he was a “Forensic Medical Examiner/Police Surgeon” which entitled him to express a view on the aetiology of the appellant’s scarring.

34. Thirdly, the judge had been wrong to discount the evidence of Dr Zafar on the basis that he had not considered any alternative cause. Mr Dieu submitted that the only evidence available to Dr Zafar, which he stated in his report he had reviewed, was the appellant’s evidence that he had been beaten in Greece by the police. Mr Dieu submitted that Dr Zafar, had stated that he had applied the Istanbul Protocol and that entailed Dr Zafar considering any alternative causes. Mr Dieu pointed out that in para 3.7 of his report, Dr Zafar referred to the appellant’s account that a man had “beat[en] him up” in Greece. It was, therefore, not correct for the respondent to say that the judge had not considered the whole of the appellant’s account. Mr Dieu submitted that there could have been a different outcome if Dr Zafar’s report had been considered.

35. Ms Rushforth submitted, departing from what was said in the rule 24 response, that there was nothing in Dr Zafar’s report to suggest that he was an expert on scarring. She submitted that although the respondent had not challenged his expertise the issue of his expertise arose on the face of his report and it was proper for the judge to take it into account.

36. In any event, Ms Rushforth submitted that Judge Woolley had properly had regard to the fact that Dr Zafar had not considered other alternative causes of the appellant’s injury, in particular what he claimed had happened to him in Greece. She relied upon the decision in the Asylum and Immigration Tribunal of RT (medical reports, causation of scarring) Sri Lanka [2008] UKAIT 00009 that an expert should specifically examine alternative possible causes raised in a case when applying the Istanbul Protocol in expressing an opinion as to the degree of consistency between the injuries and the appellant’s account. Ms Rushforth submitted that that, in itself, justified the judge in giving the limited weight that he did to Dr Zafar’s report.

37. Finally, Ms Rushforth pointed out that the judge had concluded that Dr Zafar was acting as an “informed advocate” which justified his approach to Dr Zafar’s evidence.

38. Dr Zafar is a Consultant Psychiatrist based in the UK and his report is headed "Psychiatric Report" dated 16 April 2021. At page 276 of the digital bundle, Dr Zafar sets out an "Outline of Experience" in which he states his medical qualifications, as a psychiatric including being a Member of the Royal College of Psychiatrists. He is also an approved clinician under s.12(2) of the Mental Health Act 1983. He further sets out that he is:

> "An approved Forensic Medical Examiner/Police Surgeon and prepares statements further to this which go before the Criminal Court".

39. It is plain that Dr Zafar's expertise was not raised by the respondent either in the pre-hearing process or before Judge Woolley. Indeed, in her rule 24 response, the respondent accepted that:

> "The outline of his experience set out at the beginning of his report does indicate that he is an approved forensic medical examiner/police surgeon. Whilst the judge of the FTT may have erred in finding that Dr Zafar did not have the necessary experience to assess scars, the respondent submits that this is not material, given the findings that the appellant has given inconsistent accounts".

40. Ms Rushforth resiled from that position in her oral submissions. I am not in a position, indeed detailed submissions were not made to me in this regard, to decide whether Dr Zafar does, indeed, have the requisite expertise to express opinions in relation to the aetiology of scars. I accept, however, that the issue of his expertise was not raised before the judge and, to the extent that the judge in his decision relied upon the inadequacy of Dr Zafar's expertise, he was wrong to do so without giving the parties, in particular the appellant, an opportunity to make submissions on that issue. It was, in my judgment, unfair not to do so.

41. That said, however, I do not consider that the judge's error was, in fact, material to his finding that Dr Zafar's evidence could not be relied upon to support the appellant's account and therefore his credibility. I accept Ms Rushforth's submission that the judge was entitled to give little or no weight to Dr Zafar's report in relation to the scarring because Dr Zafar failed properly to consider an alternative cause which was raised by the appellant's own evidence.

42. The importance of an expert considering alternative causes was clearly recognised by the AIT in RT. The judicial headnote summarises the position as follows:

> "Where a medical report is tendered in support of a claim that injuries or scarring were caused by actors of persecution or serious harm, close attention should be paid to the guidance set out by the Court of Appeal in SA (Somalia) [2006] EWCA Civ 1302. Where the doctor makes findings that there is a degree of consistency between the injuries/scarring and the appellant's claimed causes which admit of there being other possible causes (whether many, few or unusually few), it is of particular importance that the report specifically examines those to gauge how likely they are, bearing in mind what is known about the individual's life history and experiences".

43. Whilst the evidence was relatively brief, it was the appellant's account that he had been "beat[en] up" in Greece. He had, as a result, been subject to violence on two occasions on his own account. Dr Zafar considered that the appellant's injury to his right leg was "highly consistent" with his account by which he meant about what he claimed happened to in Iraq. That meant, under the Istanbul Protocol, that it "could have been caused" by the violence the appellant claimed had occurred to him in Iraq and that there are "few other possible causes". However, the appellant's own evidence raised the possibility of one other possible cause. In his report, Dr Zafar referred to the appellant's evidence at para 3.7 of his report but, in reaching his finding or conclusion in section 7 of his report, Dr Zafar made no reference to that potentially alternative cause but only referred to the appellant's account of what he claimed happened to him when he was held hostage by the PMF. In my judgment, Dr Zafar's failure to do so, even though he referred to the Istanbul Protocol, failed to apply the approach in RT and, as a result, entitled Judge Woolley not to regard Dr Zafar's opinion as providing support to the appellant's claim and to his credibility. In my judgment, the judge's reasoning based upon that was, in itself, such that the judge inevitably gave the limited weight that he did to Dr Zafar's report and that, whatever Dr Zafar's expertise if it had been established at the hearing, would have not affected the judge's conclusion on his report.

44. I have reached the conclusion that any error by the judge in failing to give the parties an opportunity to deal with Dr Zafar's expertise was not material without taking into account Judge Woolley's view that Dr Zafar had, in his report, acted as an "informed advocate". I have set out the passages in Judge Woolley's determination at paras 55–56 where he said this. Suffice it for me to say that it might be thought that Judge Woolley's characterisation was somewhat severe given that it was based simply upon Dr Zafar not taking into account the possible alternative cause as a result of the violence that the appellant claimed to have suffered en route to the UK whilst in Greece. While that undermines Dr Zafar's expert opinion applying RT, I doubt whether it demonstrates that Dr Zafar stepped over the line from being an "independent expert" to be one who was acting as an "informed advocate" for the appellant. Indeed, that conclusion would be somewhat inconsistent with Judge Woolley's acceptance of Dr Zafar's opinion, based upon his psychiatric expertise, that the appellant was suffering from moderate PTSD.

45. For the reasons I have given, I reject Ground 1.

Ground 2

46. Ground 2 challenges the judge's treatment of Dr Fatah's expert report at para 57 of his decision where the judge said this:

> "57. The report of Dr Fatah can be accepted as objective and well-grounded. It is remarkable how muted he is however in his assessment of the risk to the appellant. He says that if he is returned to an area controlled by Hashd al Shaabi he will face no greater risk than the rest of the civilian

> population. He does not comment on any added risk to the appellant because of his family connections or personal profile. He adds that if the appellant is seen to express criticism of Hashd al Shaabi that he will be at greater risk, but there is no evidence that the appellant ever expressed such criticism while in Iraq. As to whether he will express such criticism in the future depends on my overall findings about his credibility which I reach below".

47. Mr Dieu, at least initially in his submissions, relied on the fact that Judge Woolley had failed to take into account Dr Fatah's view expressed at para 192 of his report (which is at page 776 of the digital bundle) that the appellant would be at increased risk if he was a person of interest or wanted by the PMF.

48. The point raised by Mr Dieu is, to an extent, well taken. The judge appears to have overlooked what Dr Fatah said in para 192 of his report about an increased risk to him if he is a person of interest to the PMF where Dr Fatah said:

> "If a person is of interest, or is wanted by [the PMF], it is considered that they would face an increased risk".

49. However, Mr Dieu accepted that this point only became significant if the appellant's credibility was accepted and, therefore, the judge had found that the appellant would be of interest to the PMF on return. He accepted, in his submissions, that any error by Judge Woolley could only therefore be relevant if (contrary to Judge Woolley's findings), the appellant's account was accepted.

50. In my judgment, Mr Dieu's position is entirely correct. As Judge Woolley himself noted at the end of para 57 of his decision, this was an issue only relevant if the appellant was found to be credible. Judge Woolley did not find him to be credible and, as I have rejected Ground 1, that adverse credibility finding stands. Therefore, Dr Fatah's report so far as it concerned a risk to the appellant on return, and in particular any increased risk as a result of him being of interest or wanted by the PMF, was not relevant.

51. For these reasons, therefore, I reject Ground 2.

Ground 3

52. Ground 3 challenges the judge's treatment, if any, of the appellant's claim under Art 3 that as a result of his moderate PTSD, there would be a breach of Art 3 on his return to Iraq.

53. The ground contends (in para 11) that the judge was wrong to state that the appellant's counsel (Mr Dieu) did not seek to argue a breach of Art 3 although he had done so in his skeleton argument. In his oral submissions before me, Mr Dieu accepted that he had not made any additional oral arguments in relation to Art 3 and any impact upon the appellant's health if he returned to Iraq but he had done so in his skeleton argument (at

pages 696–703 of the digital bundle) relying upon the decisions in Paposhvili v Belgium (Application no. 41738/10) [2017] Imm AR 867 and AM (Zimbabwe).

54. As his oral submissions progressed, Mr Dieu acknowledged that Judge Woolley had, in fact, considered the Art 3 claim at para 71 of the decision and that, in the result, the appellant's challenge was rather that the judge had failed properly to consider the claim in accordance with Paposhvili and AM (Zimbabwe).

55. Ms Rushforth submitted that the judge had given adequate reasons in para 71 for rejecting the appellant's Art 3 claim based upon the impact upon his mental health on return. She submitted that the appellant's argument, set out in Mr Dieu's skeleton argument before the FtT, did not spell out how the appellant met the test in Paposhvili and AM (Zimbabwe).

56. Mr Dieu's acceptance that Judge Woolley did actually consider the appellant's Art 3 claim based upon the impact upon his health on return is, in my judgment, correct. The judge said this at para 71 of his decision:

> "71. …. Despite the assertions in the skeleton argument Mr Dieu did not seek to argue that his health was such as to entitle him to remain under Article 3. He may have moderate PTSD but there is nothing in the medical report to say that he meets the criteria in the Paposhvili case, as interpreted by the Supreme Court in AM (Zimbabwe) [2020] UKSC 17."

57. Judge Woolley also alluded to the appellant's Article 3 claim based upon the diagnosis of PTSD at para 56 of his decision.

58. In my view, Judge Woolley was saying no more in para 71 than that Mr Dieu had not made any additional oral submissions relying on Art 3 on this basis at the hearing. That was correct.

59. The issue, therefore, is whether the judge's (albeit brief) reasons in para 71 suffice to sustain his adverse conclusion in relation to Art 3.

60. In order to establish a claim under Art 3 based upon the impact to an individual's health on return to their own country, the Strasbourg Court in Paposhvili, which was followed by the Supreme Court in AM (Zimbabwe), requires that (at [182]:

> "substantial grounds have been shown for believing that he or she, although not at imminent risk of dying, would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy".

61. The Strasbourg Court has subsequently held that that approach applies to somatic conditions as well as mental illnesses (see Savran v Denmark [2021] ECHR 1025 at [137]–[139]. See also MY(Suicide risk after *Paposhvili*) [2021] UKUT 232 (IAC)).

62. In Savran, the Strasbourg Court (Grand Chamber) summarised the principles established in the Paposhvili case as follows (at [134]–[136]):

> "134. Firstly, the Court reiterates that the evidence adduced must be "capable of demonstrating that there are substantial grounds" for believing that as a "seriously ill person", the applicant "would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy" (ibid., § 183).
>
> 135. Secondly, it is only after this threshold test has been met, and thus Article 3 is applicable, that the returning State's obligations listed in paragraphs 187-91 of the *Paposhvili* judgment (see paragraph 130 above) become of relevance.
>
> 136. Thirdly, the Court emphasises the procedural nature of the Contracting States' obligations under Article 3 of the Convention in cases involving the expulsion of seriously ill aliens. It reiterates that it does not itself examine the applications for international protection or verify how States control the entry, residence and expulsion of aliens. By virtue of Article 1 of the Convention, the primary responsibility for implementing and enforcing the guaranteed rights and freedoms is laid on the national authorities, who are thus required to examine the applicants' fears and to assess the risks they would face if removed to the receiving country, from the standpoint of Article 3. The machinery of complaint to the Court is subsidiary to national systems safeguarding human rights (ibid., § 184)."

63. Judge Woolley, at para 71 of his decision, expressed the view that there was nothing in the medical report of Dr Zafar that led him to conclude that as a result of the appellant's moderate PTSD he met the criteria in the Paposhvili case. Those criteria would be that there were substantial grounds for believing that the appellant would suffer *either* a "serious, rapid and irreversible decline in his health resulting in intense suffering" *or* a "significant reduction in life expectancy" on return. In my judgment, that test could not be met on the evidence.

64. In his report, Dr Zafar at paras 8.1–8.2 diagnosed the appellant as suffering from PTSD of "moderate severity". Judge Woolley accepted that finding at para 56 of his decision.

65. As regards the impact upon the appellant of being removed, Dr Zafar expressed his opinion first in relation to the appellant's detention in the UK and then arising from his fear of being killed in his homeland at paras 8.3–8.4 of his report as follows:

> "8.3 In the case of [the appellant] being subjected to immigration detention, there is a likelihood of deterioration of his symptoms. The immigration detention may increase the risk of self harm or suicide.
>
> 8.4 [The appellant] fears that he would be killed in his homeland upon return. The perception of revisiting the place full of traumatised memory would be likely to intensify the symptoms of Post-Traumatic Stress Disorder and increase the risk of self-harm or suicide rendering him unfit to travel abroad".

66. At section 9 of his report, Dr Zafar dealt with the "prognosis" of the appellant as follows:

> "9.2 In my opinion, on the balance of probabilities, [the appellant] will benefit from Cognitive-Behavioural Therapy treatment. Based on his current mental state the prognosis of his long-term psychological illness, with the suggested Cognitive-Behaviour Therapy is good.
>
> 9.3 In the case of not receiving treatment there is a likelihood that his depression may deteriorate further which may require treatment at hospital with or without detention under Mental Health Act 1983 (amended 2007).
>
> 9.4 On the balance of probabilities, there is a chance that despite receiving appropriate medical and psychological treatment [the appellant's] condition still would not improve as it is highly correlated with the uncertainty of his immigration status".

67. Bearing in mind the test in Paposhvili applied by the Supreme Court in AM (Zimbabwe), in my judgment the evidence simply could not establish a breach of Art 3. At paras 8.3–8.4, Dr Zafar focused on the appellant's mental health in the UK, not on return to Iraq. At para 9.2, Dr Zafar indicated that the appellant will benefit from CBT treatment. There would appear to have been no evidence before the judge (or at least which was drawn to the judge's attention) that the appellant was receiving CBT treatment in the UK and none was drawn to my attention at the hearing. Again, Dr Zafar focused in paras 9.3 and 9.4 on the impact on the appellant's mental health in the UK.

68. None of this is directed to the impact upon the appellant on return to Iraq and certainly there is no express recognition of any impact upon the appellant on return to Iraq which could conceivably fall within the Paposhvili/AM (Zimbabwe) test of establishing that there are substantial grounds for believing that as a result of the appellant's moderate PTSD there will be either a "serious, rapid and irreversible decline in his health resulting in intense suffering" or a "significant reduction in his life expectancy".

69. Although, therefore, Judge Woolley's reasoning in para 71 is brief, it is not only consistent with the evidence of Dr Zafar but his conclusion was inevitable that the appellant could not succeed under Art 3 based upon this evidence.

70. For these reasons, I reject Ground 3.

Decision

71. For the above reasons, the decision of the First-tier Tribunal to dismiss the appellant's appeal did not involve a material error of law and its decision stands.

72. Accordingly, the appellant's appeal to the Upper Tribunal is dismissed.

Signed

Andrew Grubb

Judge of the Upper Tribunal
11 May 2022