



IAC-AH-CO-V2

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

Appeal Number: AA/07302/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 19th June 2015**

**Decision & Reasons Promulgated
On 17th August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR FAHRETTIN ICER
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Hitschmann, Counsel

For the Respondent: Ms A Brocklesby-Weller, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Turkey born on 1st January 1967. The Appellant arrived at Heathrow by air from Greece with a Bulgarian passport on 16th September 2013. His baggage was searched at the airport and a Turkish passport and Turkish ID card were discovered. He was detained. Prior to that the Appellant had made two applications for family visit visas both of which had been refused.

2. On interview the Appellant confirmed that he sought entry to the UK by using a Bulgarian passport he bought for £2,000. He advised the Secretary of State that he initially sought entry for three to four months to sightsee before applying for citizenship under the Ankara Agreement and then he wanted to bring his family to the UK. He said that he had spent all his money on the Bulgarian passport and had nothing else available. He advised he was looking for work in the UK and that he did not wish to return to Turkey because he was poor. Removal directions were set. He claimed asylum. Removal directions were then cancelled.
3. On 4th September 2014 the Appellant's application for asylum which was based on a fear that if returned to Turkey he would face mistreatment due to an accusation that he was a member of the PKK was refused. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal M J Gillespie sitting at Hatton Cross on 6th March 2015. In a determination promulgated on 16th March 2015 the Appellant's appeals for asylum and pursuant to the Human Rights Act 1998 were dismissed and the Appellant was found not to be in need of humanitarian protection.
4. On 26th March 2015 Grounds of Appeal were lodged to the Upper Tribunal. Those grounds contended that the Immigration Judge made an error in law and fact when he made adverse findings of credibility against the Appellant. To come to this conclusion the judge had listed the inconsistencies between the accounts given by the Appellant during his asylum interview and for his medical report. It was contended that the judge had failed to take into account the Helen Bamber Foundation report which provided an explanation for the differences in his account. It was contended that the report explained why the Appellant was confused about the amount of days and the details of his detention and that the Judge had given no regard to this. Further it was contended that the judge had failed to attach the appropriate weight to the conclusions in the Helen Bamber Foundation report relating to the Appellant's scars.
5. On 1st May 2015 First-tier Tribunal Judge Astle granted permission to appeal. On 18th May 2015 the Secretary of State responded to the Grounds of Appeal under Rule 24. The Rule 24 response states that the judge had taken account of the report of the Helen Bamber Foundation but noted that the writer was not aware of the substantial contradictions and the history of regular travel into and out of Turkey. It was contended that it was not clear that the assessor of the Helen Bamber Foundation was aware of this travel history and further that the report extracted little to explain the wholesale inconsistencies identified. The response concluded by stating that the judge had reviewed all the evidence and reached sustainable conclusions.
6. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel Ms Hitschmann. Ms Hitschmann has considerable experience of this matter. She appeared before the First-tier Tribunal and she is also the author of the Grounds of Appeal. In addition she provided a skeleton argument for the First-tier Tribunal and has provided to me a further

skeleton argument dated 19th June 2015 in readiness for this appeal. The Secretary of State appears by her Home Office Presenting Officer Ms Brocklesby-Weller.

Submission/Discussion

7. Ms Hitschmann starts by relying on the factual basis upon which the Appellant brought his case before the First-tier Tribunal. These facts are succinctly set out at paragraphs 4 to 9 of her initial skeleton and in paragraph 4(a) to (f) of her skeleton for the current hearing. The basis of the claim within both documents is identical namely that the Appellant was accused by the authorities of belonging to the PKK. He was arrested in May 1995 while watching the Nevruz festival and was released after agreeing to be an informant. He claims to have been arrested again in 2000 and 2005 and during those detentions to have been interrogated, beaten and tortured. He claims in August 2013 the authorities searched his address as they believed he was sheltering a PKK member and since leaving Turkey the authorities have been to his address to look for him.
8. Ms Hitschmann takes me to paragraphs 17 and 20 of the First-tier Judge's determination indicating that they address the credibility findings and asked me to look at the two accounts. She submits that the judge should have made a finding of post-traumatic stress disorder and she submits that this goes to the credibility of the Appellant's testimony. She relies on that submission which is found in both the Grounds of Appeal and her skeleton argument and submits that there is a material error of law in the decision of the First-tier Tribunal Judge.
9. Ms Brocklesby-Weller on behalf of the Secretary of State takes me initially to paragraph 27 of the judge's determination and states that it is quite clear from that that the judge has considered all the evidence in the round and that he has also noted that the Appellant had stated at paragraph 21 that although the Appellant entered the United Kingdom successfully he would have disposed of his false passport and using his Turkish identity have applied for leave for the purpose of developing a business under the Ankara Agreement. In such circumstances she submits that the Appellant therefore acknowledges that he would be in a position to travel in and out of Turkey without difficulty.
10. She takes me to paragraph 17 of the determination pointing out that the discrepancies in the account are dealt with therein. She points out the Appellant appears to have given a coherent account at interview and latterly appears to have developed an inability to allegedly record dates. She further points out there is no other evidence produced in the appeal relating to post-traumatic stress disorder other than the Helen Bamber report and whilst she accepts that some scars may be consistent with the Appellant having been beaten this does not mean that the Appellant's account is credible and that it was for the judge to make that finding which he has done.
11. She further points out the judge found that there was substantial reason to doubt the report and that the report made no reference to the refusal decision. She takes me to paragraph 25 of the First-tier Tribunal Judge's decision and submits that the judge

has given adequate weight to the report and provided adequate reasons. She submits there is no material error of law.

12. In brief response Ms Hitschmann merely states that the account in the medical report is in greater detail.

The Law

13. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
14. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings

15. A proper approach to credibility requires an assessment of the evidence and of the general claim. In asylum claims, relevant factors are firstly the internal consistency of the claim, secondly the inherent plausibility of the claim and thirdly the consistency of the claim with external factors of the sort typically found in country guidance. It is theoretically correct the claimant need do no more than state his claim. But that claim still needs to be examined for consistency and inherent plausibility. In this case the judge has fully, and properly carried out that process and analysis. He has begun his assessment of credibility and the findings of fact at paragraph 16, noted the material discrepancies at paragraphs 17 to 20 and at paragraphs 21 to 23 considered the consistency of the Appellant's claim.
16. However the main thrust of the allegation against the First-tier Tribunal Judge is aimed at his assessment of the medical report and the suggestion that the judge has failed to take into account the explanation for the differences in his account. I completely reject that contention. It is clear paragraphs 24 to 26 that a very detailed and thorough examination of the Helen Bamber Institute report has been given by

the judge. Whilst noting the skeleton argument submitted by Ms Hitschmann, it does not add a great deal and merely seeks to reargue that this is an Appellant whose appeal should be allowed. Submissions made are tantamount to disagreement and the findings of the judge rather than to disclosing any material error of law in his analysis. The judge has looked at the facts and has made findings which he was entitled to. Further he has given due and proper consideration to the medical report and has given adequate weight to the report when making his judicial analysis. In such circumstances I find that the decision is well reasoned and the findings are totally sustainable. The decision discloses no material error of law and the appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

Decision

The decision of the First-tier Tribunal Judge discloses no material error of law and the appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No fee award.

Signed

Date

Deputy Upper Tribunal Judge D N Harris