



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

Appeal Number: AA/07324/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 1 April 2015
Prepared 1 April 2015**

**Determination Promulgated
On 12 May 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**ZAFER NERGIZ
(NO ANONYMITY DIRECTION)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Clarke, Counsel, instructed by Ahmad Rahman Khan
For the Respondent: Mr P Duffy, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Turkey, date of birth 1 April 1984, appealed against the Respondent's decision dated 8 September 2014, to make removal directions following the service of a form IS15A on 14 April 2014. The appeal came before First-tier Tribunal Judge Davidson (the judge) on 21 November 2014 and by a decision dated 15 January 2015 he dismissed appeals under the Refugee Convention, Articles 2 and 3 of the ECHR and in respect of Humanitarian Protection.

2. Permission to appeal to the Upper Tribunal was given by First-tier Tribunal Judge Cox on 9 February 2015.
3. The grounds settled by the solicitors raise a number of points but the most significant point is that the judge made full and extensive criticism of the Appellant's claim, his evidence, his reliability as a witness, significant criticisms of inconsistency, contradiction, evasion and vagueness. Then for the first time the judge turned to the medical report of Dr Arnold, dated 30 October 2014, concerning support for the Appellant's account and a diagnosis of PTSD and depression. The report was made at a time after the Appellant had had a full asylum interview. The Judge rejected the evidence of the doctor on the basis that the doctor has been receiving information from the Appellant who is "so patently an unreliable witness that I have decided not to accept Dr Arnold's conclusion in this case".
4. I am fully satisfied from reading the balance of the decision, after the quotation at paragraphs 61-64, that the rejection of Dr Arnold's conclusions is solely driven by the assessment that the judge had made of the Appellant and his evidence.
5. In the Appellant's bundle before the judge, Dr Arnold (pages 16 to 22) set out his methodology and identified the history given by the Appellant. He made plain that the views he had formed were not simply those derived from the Appellant's claims of ill-treatment and injury, it was also from his examination of the Appellant, the diagnostic conclusions reached and his assessment of the other potential causes of the identified PTSD. It was, he said,

"... unusual for a man to whom the extent and types of pathology in this case if he had not survived torture. The medical evidence makes it more likely than not that he has indeed been harmed in the ways he described and has physical and psychological damage as a result."
6. In the circumstances, to dismiss the medical evidence principally on the basis of the Appellant's lack of credibility and the presentation of his evidence, does not show a proper assessment, of the doctor's evidence, as part of the whole evidence.
7. Accordingly I am satisfied that this was a fundamental error of law that means the decision will have to be remade.
8. Mr Clarke further criticised the over-reliance by the judge upon the contents of the screening interview on the basis that the screening interview's questions are limited and not to be taken, in the light of the case law, to be of material weight. It seemed to me that was true other than where manifest discrepancies and differences are otherwise inexplicable. Further, Mr Clarke criticised the failure to take into account the issue of PTSD, as recited in the material. It did not seem to me that this is more than an iteration of the same point that I have already addressed.

9. Finally, Mr Clarke criticised the conclusion the judge reached on the delay in leaving Turkey to come to the United Kingdom. In this sense it does not appear that there was a significant delay if the Appellant's claim was as he made out. However, the delay in making a claim once he was within the safety and protection afforded to him in the United Kingdom was a matter that the judge was entitled to take a view upon, but plainly that had to be in the context of the evidence as a whole and the evidence received addressing those matters. I express no view whatsoever upon those issues.
10. I am satisfied that the Original Tribunal's decision cannot stand. The appeal is allowed to the extent that the matter will have to be remade in the First-tier Tribunal.

Directions

- (1) Remitted back to the First-tier Tribunal to be remade.
- (2) Time estimate 3 hours.
- (3) Turkish interpreter required
- (4) Any additional evidence or documents court information relied upon to be provided in bundles to be served in the Tribunal and the parties no later than 10 working days before the further hearing in the First-tier Tribunal.
- (5) Not to be listed before First-tier Tribunal Judge Davidson nor First-tier Tribunal Judge R A Cox.
- (6) To be heard at Taylor House.

Signed

Date 7 May 2015

Deputy Upper Tribunal Judge Davey