



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/00338/2017

THE IMMIGRATION ACTS

Heard at Field House  
On 21 September 2017

Decision & Reasons Promulgated  
On 2 October 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

ME  
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms N Nnamani, Counsel instructed by Howe & Co Solicitors

For the Respondent: Mr P Singh, Home Office Presenting Officer

Anonymity

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

DECISION AND REASONS

1. The appellant is a citizen of Turkey born on [ ] 1990 who applied for asylum in July 2016. His application was refused by the respondent on 3 January 2017. The appellant appealed to the First-tier Tribunal where his appeal was heard by Judge Moore. In a decision promulgated on 27 February 2017 Judge More dismissed the appeal. The appellant is now appealing against that decision.

### The Appellant's Claim

2. The appellant claims to be a politically active Kurd who has been persecuted, and would be at risk of persecution on return to Turkey, because of his involvement with the People's Democratic Party (HDP) and the Turkish authority's belief that he is a supporter of the PKK. He claims to have been detained and subjected to torture on three occasions - in 2010 following a protest and hunger strike; in 2012 following a raid on his family's home; and in 2016 following a further raid on his home. He claims that on the first occasion he was released unconditionally after two days and on the second he was released after 2 or 3 days but required to report monthly to a security station.
3. He claims that during his detention in 2016 the authorities focused their questioning on his alleged involvement with a PKK supporting Kurdish television channel ROJ TV, which they mistakenly believed was connected to a newspaper published by his cousin that he had distributed whilst at university. He claims that he was forced to sign a document confessing to being a supporter of the PKK and to agree to obtain information on two branches of the PKK. He claims to have reported on one occasion and then gone into hiding before fleeing Turkey with the assistance of an agent.
4. In support of his case, the appellant submitted, inter alia, a witness statement from a cousin who was granted refugee status in the UK in January 2017. His cousin claimed to have taken part in political activities for the HDP with the appellant. He also claimed that he published, and the appellant distributed, a Kurdish newspaper at their university that was thought to support the PKK. He claims that he was detained and tortured with others involved in the newspaper but that the appellant was not detained at that time. He became aware that the appellant was detained in 2016 through family.
5. The appellant also submitted in support of his claim a medical report from Dr J Hajioff, a consultant psychiatrist and medical practitioner qualified in medicine and surgery. Dr Hajioff analysed the appellant's scarring and, applying the Istanbul Protocol, concluded that they were "consistent with" the appellant's account. He also concluded that the appellant suffers from chronic PTSD and has some symptoms of depression.

### Decision of the First-tier Tribunal

6. Judge Moore did not find the appellant credible.
7. The judge, *inter alia*, drew adverse inferences from the following:

- a) In his screening interview the appellant was asked if he had ever been detained and replied that he had not. The judge did not accept as plausible the appellant's explanation for this, which was that he did say he was detained but the interpreter told him to include this in his witness statement.
  - b) In the screening interview the appellant claimed to be a member of a political party who had to give up his membership due to threats but later claimed to have only been a supporter.
  - c) The appellant claimed to have gone into hiding for 1 ½ months with his father's friend but this was inconsistent with his witness statement which indicated he was in hiding for three months.
  - d) The judge also stated that he did not find it credible that the appellant would have remained in Turkey for three months if he was really of such interest to the authorities and was required to be an informer.
  - e) The appellant had said that after his third detention, when he reported to the police and told them he had not managed to obtain any information, he was told that was fine for now but he would need to bring information next time. The judge described this alleged response from the police as "timid and pathetic" and therefore lacking in credibility.
8. In respect of the evidence of the appellant's cousin, the judge at paragraph 28 accepted that the cousin was politically involved with the HDP and published a newspaper but not that the appellant was also politically active. He noted that the cousin came to the UK in July 2015 and was therefore not in Turkey when the third detention was said to have taken place.
  9. The judge considered the report of Dr Hajioff at paragraph 29 of the decision. The judge acknowledged that Dr Hajioff found the appellant's account of ill treatment to be consistent with his injuries but maintained his view that the appellant was not tortured because of his lack of credibility and reliability.
  10. The judge considered the Country Guidance cases IA (Risk-Guidelines-Separatists) Turkey CG (2003) UKIAT 00034 and IK (Returnees-Records-IFA) Turkey CG (2004) UKIAT 00312 and concluded that they did not apply to the appellant given his credibility findings.
  11. In the fourth paragraph of paragraph 31 the judge considered the appellant's sur place activity, finding that he is not a member of a political organisation in the UK and that his activities have not extended beyond attending talks.
  12. In the same paragraph, the judge stated:

*“At its highest, and there is little reliable evidence of this, the appellant may have been a low level supporter of the HDP, and this in my view would not place the appellant at risk on return. There is no credible evidence demonstrating that this appellant was targeted personally due to his political opinion or indeed his ethnicity”*

13. The judge concluded that his:

*“negative credibility findings fundamentally undermine this appellant’s claim”.*

### Grounds of Appeal and Submissions

14. Five grounds of appeal are pursued.

15. The first ground states that the judge failed to adequately explain why the appellant’s cousin’s supportive evidence was not capable of corroborating the appellant’s account. Ms Nnamani, in her submissions, argued that as the judge accepted the appellant’s cousin as credible and accepted his evidence the judge needed to explain why he did not attach weight to the cousin’s evidence about the appellant’s political involvement and detention.

16. The second ground of appeal maintains that the judge reached his conclusion about there being inconsistencies between the screening interview and the rest of the evidence without having regard to the appellant’s explanation of this in his witness statement. The grounds also assert that the judge failed to have regard to the materiality of the alleged inconsistency.

17. The third ground contends that the judge failed to explain why the appellant’s evidence about the third detention was rejected. It is also argued that the judge misdirected himself by implying the authorities were “soft” on the appellant in respect of his reporting after the third detentions when the appellant was warned he was required to bring information on the next occasion. It is also argued that the judge erred by placing weight on the length of time the appellant remained in Turkey in hiding when this is immaterial.

18. The fourth ground argues that the judge failed to properly consider Dr Hajiouf’s evidence. Relying on Mibanga v SSHD [2005] EWCA Civ 367, Ms Nnamani argued that the judge erred by determining credibility first and not looking at the medical evidence holistically.

19. The fifth ground argues that there was a failure to properly consider the background evidence and that the extant Country Guidance case IK (Returnees) was not properly applied. Ms Nnamani argued that if the judge found the appellant to be a low level supporter of HDP, as stated in paragraph 31 of the decision (see paragraph 11 above where the paragraph at issue is quoted), then the country guidance case law and country background information indicates the appellant would be at risk.

20. Mr Singh argued that this was a sufficiently reasoned decision where the judge had properly concluded the appellant lacked credibility. Most fundamentally, there was a significant discrepancy between the appellant's screening interview and his other evidence and the judge was correct to take this into consideration in assessing credibility.

### Consideration

21. The central issue in this appeal is whether the judge, for the reasons he gave and based on the evidence that was before him, was entitled to conclude that the appellant lacked credibility. Reading the decision as a whole, I am satisfied that this conclusion was open to the judge for several reasons.

22. Firstly, there is a substantial discrepancy in the appellant's evidence. The core of the appellant's claim is that he was detained and tortured by the Turkish authorities on three occasions. Yet in his screening interview no mention is made of this. At paragraph 5.4 of the screening interview it is recorded that the appellant said he had never been detained. At paragraph 4.1, in response to being asked the basis of his asylum claim, the appellant only stated that he was under surveillance and the Turkish government wants to get rid of him. Although recognition must be given to the strain the appellant may well have been under at the screening interview, the judge cannot be criticised for attaching weight to the appellant giving an entirely different account at the screening interview to that which he gave subsequently.

23. Secondly, although the appellant submitted an expert report by Dr Hajioff to substantiate his claim to have been subjected to torture, the report did not provide strong support for this claim. The Istanbul Protocol lists five categories for describing a lesion, as follows:

- (a) Not consistent: the lesion could not have been caused by the trauma described;*
- (b) Consistent with: the lesion could have been caused by the trauma described, but it is non-specific and there are many other possible causes;*
- (c) Highly consistent: the lesion could have been caused by the trauma described, and there are few other possible causes;*
- (d) Typical of: this is an appearance that is usually found with this type of trauma, but there are other possible causes;*
- (e) Diagnostic of: this appearance could not have been caused in any way other than that described.*

24. Dr Hajioff was only able to conclude that the appellant's lesions were "consistent with" his account, which means there are "many other possible causes".

25. Thirdly, the evidence of the appellant's cousin, which the appellant sought to rely on to substantiate his claim, does not touch on much of the appellant's account. In his statement dated 2 February 2017, the appellant's cousin makes no mention of the appellant being detained or tortured in 2010 or 2012. The only knowledge the cousin claims to have in respect of the 2016 detention is based on what he was told by family.

The statement says that he and the appellant used to take part in activities for the HDP but there is no explanation of what these were and the only activity by the appellant described is that the appellant distributed the newspaper the appellant's cousin published. There is no inconsistency in accepting, as the judge did, that the appellant's cousin was politically involved with the HDP but that the very limited information provided by the cousin about the appellant was not sufficient to find that he was also politically active.

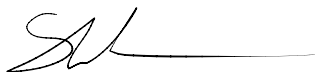
26. Fourthly, the judge's approach to the country guidance case law and the objective country information must be considered in the context of his credibility findings. Having rejected the appellant's claim to have been arrested or detained, or to have been politically active in pro Kurdish activities either in Turkey or the UK, it was consistent with the Country Guidance case law and background information to find that the appellant would not be at risk on return to Turkey.
27. For the reasons I have given, none of the appellant's grounds of appeal are able to establish that the decision of the First tier Tribunal contains a material error of law and accordingly the appeal is dismissed.

### Decision

A. The appeal is dismissed.

B. The judge has not made a material error of law and the decision of the First-tier Tribunal stands.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 29 September 2017