

**Upper Tribunal
(Immigration and Asylum
Number: PA/14302/2016)**



Chamber)

Appeal

THE IMMIGRATION ACTS

**Heard at Field House
Oral decision given following hearing
On 10 October 2019**

**Decision & Reasons
Promulgated
On 26 November 2019**

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

**MR A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Panagiotopoulou, Counsel instructed by Howe & Co
Solicitors

For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant in this case is a national of Turkey who was born in March 1983. He appeals against the decision of First-tier Tribunal Judge Hussain promulgated on 4 July 2019 following a hearing at Hatton Cross on 7 June 2019 in which Judge Hussain dismissed his appeal against the respondent's decision refusing to grant him asylum or humanitarian protection. The basis of his claim is that if returned to Turkey he would be at real risk of receiving ill-treatment on account of his political views and activity being a member of the HDP.
2. It was accepted by the judge that the appellant was a member of the HDP and that he had been detained on three occasions since 2000, 2012. However the judge rejected the assertion made by the appellant that he had also been detained and tortured between 2012 and 2014 for reasons which it is claimed in the grounds are unsustainable.

3. For the reasons which follow it is not necessary to go into any great detail as to the grounds themselves, because it is accepted on behalf of the respondent very fairly by Mr Bramble before this Tribunal that the grounds are made out. On behalf of the respondent, before this Tribunal, Mr Bramble stated as follows:

“Basically, there is merit to all the grounds. With regard to ground 1, the judge’s approach to the medical report for example, where he cross-references to the interview, fails to take into account that it had never been put to the appellant what the nature of the torture was for which his medical report was obtained. Accordingly, the judge does not engage properly with the medical report.

With regard to ground 2 this is in relation to the evidence of the witness who was present, the appellant’s nephew. At paragraph 38 of his decision, the judge stated as follows:

‘38. In regards [to] the appellant’s nephew, that the nephew mentioned the appellant in his own interview, if something deserves to be given some weight [sic], however it is in my view, likely that the nephew mentioned his uncle, in the hope that his claim succeeds, then his reference to the appellant will provide ready corroboration for the appellant’s claim, if he came to this country. It is not, in my view, beyond the realms of reality that having claimed asylum, in the United Kingdom for himself, the nephew would have been looking forward to encouraging other members of his family, including the appellant to do the same, given the history of successful asylum claims in his family members of the community”.

This is an asylum matter, so lower standards apply, so the judge needed to sort out his findings with regard to the merits of the nephew’s claim and how that impacted on the basis of the appellant’s claim.

With regard to the third ground, that is the failure to have regard to relevant matters, an example is at paragraph 29 where the judge’s explanation of why he believed that the appellant would not have been in attendance at HDP rallies was based on the fact as a sub-contractor of foreman he would not have had the time or wish to do so, and furthermore he stated that ‘if he [that is the appellant] had no regard for his own liberty and physical integrity, then at least he would have had regard for the 70-80 people working on the project. How were they supposed to manage without their leader being around?’

Coming to a conclusion on this premise is moving away from the lower standard of proof.

Likewise, part of the appellant's claim was the circumstances of his brother and the family history of pro-HDP or Kurdish activities which the judge has ignored.

Then, with regard to ground 4, which is the failure of the judge to have regard to relevant country guidance, the judge found that it did not make sense for the authorities to have released the appellant after so short a time, but that takes no account of country guidance on this point.

With regard to ground 5, the judge has given weight to the fact that if he was not trying to make his presence known, why would he access a government website?

Although this is not a reasoned finding, and although on its own it might not be the strongest grounds, nonetheless it does add some weight to the other grounds."

4. I would add to what Mr Bramble stated that it is unfortunate that at paragraph 35 of his decision when referring to the appellant's failure (as found by the judge) earlier to give a detailed account of the specific torture said to have been suffered to his genitals, (this ground is accepted by Mr Bramble with regard to ground 1), the judge suggested as a reason for why a more detailed account was given later that "these details emerge much later, when I presume he would have been briefed by those acting for him to put in the details". He goes on to refer to the appellant's evidence that he had been burnt with lit cigarettes on his back that "the infliction of such injury would be so unusual that, in my opinion, the appellant would have rushed to volunteer it. Yet, he did not do so until his written statement and appearance before the expert". There is no evidential basis for suggesting that his account was concocted with the assistance of those professionally instructed by him and furthermore this allegation was never put to him. Although on its own this might be said to be mere sarcasm (which preferably should not be contained within a decision in any event) it does add to the general sense that this decision has not been reached for sustainable reasons.
5. I accept the criticism which have been effectively conceded on behalf of the respondent by Mr Bramble and accordingly this decision must be set aside and remade.
6. In the circumstances because there will have to be a complete rehearing it is appropriate that this appeal be remitted to the First-tier Tribunal for rehearing. Regrettably that has happened once before and so this will be the second remittal and for this reason I will direct that it should be reheard by a Designated Immigration Judge.
7. Although the previous hearing was at Hatton Cross, Ms Panagiotopoulou asked if this appeal could be remitted now to Taylor House, because the appellant lives much closer to that hearing centre and also his nephew

had moved to Chelmsford and it would be logistically much easier for him (and he will be giving evidence) to attend Taylor House instead rather than at Hatton Cross. I will accordingly so direct and my decision is as follows:


Decision

The decision of First-tier Tribunal Judge Hussain is set aside as containing material errors of law and this appeal will be remitted for rehearing before a Designated Immigration Judge sitting at Taylor House, with no findings retained.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed:

A handwritten signature in black ink, appearing to read 'Ken Craig', is written on a light blue background.

Upper Tribunal Judge Craig
November 2019

Date: 20