



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

Appeal Number: PA/04113/2017

THE IMMIGRATION ACTS

Heard at Field House

On 29th September 2017

**Decision &
Promulgated**

On 23rd October 2017

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR AYDIN YILMAZ
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Sirikand (Solicitor), Ahmed Rahman

For the Respondent: Mr S Staunton, (Senior HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Colvin, promulgated on 9th June 2017, following a hearing at Taylor House on 26th May 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was

granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Turkey, who was born on 21st December 1985. He appealed against the decision of the Respondent dated 20th April 2017 refusing his application to the Respondent Secretary of State made on 20th April 2017 for asylum and humanitarian protection under paragraph 336 of HC 395.

The Grant of Permission

3. In this matter, permission was granted by the Upper Tribunal on 8th August 2017 to the effect that the judge in this case had made adverse credibility findings partially on the basis that she found there was no reference in the psychiatric report to the Appellant having “sought any medical assistance for his mental state until very recently – for example the prescription of antidepressants is dated April 2017”. In fact, the Appellant had received counselling for PTSD two years earlier. The judge found this omission. Given that the judge had then also stated that, as a result of there being no earlier reference to the Appellant’s mental state, that this would “lessen the weight that can be attached to this report”, permission to appeal was granted.

The Hearing

4. At the hearing before me on 29th September 2017, Mr Staunton, appearing as Senior Home Office Presenting Officer, on behalf of the Respondent, conceded that, notwithstanding the Rule 24 response, there was a material error in the judge’s determination. This being so, this matter ought to be remitted back to the First-tier Tribunal, to be determined by a judge other than Judge Colvin.

Notice of Decision

5. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remit the matter back to the First-tier Tribunal.
6. In granting permission, the Upper Tribunal had observed that the medical result was no longer on file, and although this may present a problem, it is important that the fact that there was a report two years ago, rather than in 2007, referring to the medical assistance for the Appellant’s mental state, does mean that a proper evaluation of the circumstances must take place.
7. This is particularly so given that the judge below had referred to the psychiatric report of Dr J Hajioff dated May 2017 (see paragraph 12) and had noted that there were scars on the Appellant’s head (paragraph 13).

8. Given the omission of the relevant evidence, the conclusion reached by the judge that “the Appellant’s account is unreliable and lacks any credibility” (paragraph 28) requires revisiting on the basis of a proper analysis of all the evidence that was submitted.
9. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is allowed to the extent that it is submitted back to the First-tier Tribunal to be determined by a judge other than Judge Colvin.
10. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

19th October 2017