



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

Appeal Number: PA/11857/2017

THE IMMIGRATION ACTS

Heard at Field House

On 8 May 2018

**Decision & Reasons
Promulgated
On 14 May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE FROMM

Between

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(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J H Trumpington, Counsel

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

DECISION AND REASONS ON ERROR OF LAW

1. The appellant appeals with the permission of the First-tier Tribunal, against a decision of Judge of the First-tier Tribunal Seelhoff in which he dismissed the appellant's protection appeal. The appellant is a Turkish national and he claimed to be at risk of persecution on account of his political opinions. He also claimed to have suffered past persecution.
2. The respondent accepted the appellant was a Turkish Alevi Kurd. However, the account he gave of arrests for involvement with the HDP and membership of HADEP was rejected on credibility grounds.

3. Judge Seelhoff, after hearing the appellant give evidence, also found him not credible. He gave seven main reasons that this conclusion:
 - (1) the appellant had not been able to explain why he had not been able to obtain evidence of his past involvement with political organisations;
 - (2) there was background evidence to the effect that ordinary members of the HDP who have come to the adverse attention of the authorities have done so because they were participating in demonstrations and rallies. An ordinary member would not generally attract the adverse attention of the authorities on account of their political beliefs;
 - (3) the judge considered the appellant had been very vague about what he had done for the HDP since his arrest in 2014. He had not described doing anything apart from occasionally attending the headquarters when it was quiet, having tea, chatting with friends and maybe delivering leaflets. In particular, he never attended rallies or big crowds. The appellant would not therefore have been of any interest to the authorities;
 - (4) someone who had been involved in political opposition since 1996 would have had a better idea, than the appellant had been able to show at his interview, of what had actually happened with the party since then;
 - (5) the appellant had been inconsistent regarding keeping his involvement with the HDP's secret;
 - (6) the authorities would not have regarded the appellant as a valuable source of information about the HDP or the PKK because the appellant had never been associated with PKK and his involvement with the HDP was peripheral at best; and
 - (7) the scarring which the appellant has was not what might have been expected given his account of being subjected to extreme torture.
4. The grounds seeking permission to appeal challenged the judge's decision on to main grounds. In relation to his consideration of the scarring report, he had failed to have regard to the country guidance decision of *IK (Returnees - Records - IFA) Turkey CG* [2004] UKIAT 00312, which made clear that less detectable methods of torture were used. Also, the judge failed to provide reasoned findings for rejecting the expert's conclusion that the appellant was suffering from mental health problems attributable to torture and ill-treatment. The grounds challenged the judge's assessment that the appellant had been vague about his activities for the HDP since 2014. Again, the country guidance decision of *IK* was relied on for the proposition that adverse interest often results from grassroots activism. Had the judge considered this he would not have reasoned that the appellant could not plausibly have come to the adverse interest of the authorities.
5. Permission to appeal was granted by the First-tier Tribunal because it was unclear on what evidential or expert basis the judge had reached the

conclusion about more extensive scarring beyond speculation. The judge was not an expert. Permission was granted to argue all the grounds.

6. The respondent has not filed a rule 24 response.
7. I heard submissions from the representatives on the issue of whether the judge's decision contained a material error of law.
8. Mr Trumpington's submissions expanded on the written grounds. He placed more emphasis on the first ground concerning the judge's assessment of the medical report of Dr Hajioff.
9. I note that Dr Hajioff is a consultant psychiatrist but he states at the beginning of his report that he has made many assessments of scarring as well. He set out a summary of the appellant's account of receiving numerous beatings, having his head pushed into dirty water and electrocution. He found the scar on the appellant's left cheek to be consistent with a blow to that area. The linear scar on the back of his head was typical of a blunt injury to that area. The scar below his right knee was typical of an injury to that area which had repaired. The age of the scars was consistent with the account. The appellant is right-handed and his injuries are scattered in a pattern not typical of self-harm but he could not rule out self-harm by proxy. He found the appellant met the criteria for a diagnosis of depression and PTSD. The appellant had given an account of being exposed to events which generated great fear.
10. The judge summarised the medical report in paragraph 15 of his decision. In the section of his decision in which he set out his findings and conclusions, the judge returned to the report in paragraphs 36 and 37. He said he was "*troubled by the medical report*". He quoted from the appellant's substantive interview at which he had described his beatings. The appellant had said, "*there was blood everywhere*". The judge noted the only physical evidence of the ill-treatment which the appellant claimed to have undergone was the scar on his face and the scar on the back of his head. He continued, "*[a]lthough I am not a medical expert it seems to me unusual that the extreme campaign of abuse described left only two injuries visible which the doctor simply said were consistent with being struck either with a fist or with a blunt object. I am not satisfied that the injuries were necessarily caused in the manner the Appellant claims. If the Appellant had been subjected to the extremes of torture he claims I find that it would be likely that there would be something further to show for it and more importantly it would be likely that he would have needed medical treatment on release from detention.*"
11. Mr Trumpington challenged the adequacy of this reasoning. I have recorded his submissions in full but I shall only mention the main points. In relation to the judge's choice of language, in particular the use of the words "necessarily" and "likely", I do not accept this shows the judge erred by imposing an inappropriately high standard of proof. The judge directed himself correctly in paragraph 12 of his decision and there is no

real basis for arguing that he departed from the low standard when it came to examining the medical evidence. It is entirely clear what the judge meant. He did not regard the report to be of such cogency that the support it offered to the appellant's claim as corroboration that he had been ill-treated in the manner described warranted significant weight. Rather, the judge explained with adequate reasons why he came to the conclusion that it did not. It was perfectly open to the judge to criticise the report on the basis that what appeared obvious even to someone who is not a medical expert warranted consideration in order for the report to be regarded as a thorough assessment of the physical consequences of the lengthy ordeal described by the appellant.

12. Mr Trumpington took issue with the judge's assessment that the appellant had not required medical treatment and pointed out that the appellant said he had been instructed not to go to a doctor. However, I consider this issue takes the argument no further. Again, all the judge is saying here is that, if the appellant had been the victim of a sustained beating, common sense dictates that he is likely to have suffered far greater injuries than the report and his account suggest he did. Likewise, the argument set out in the written grounds seeking permission to appeal, that the judge failed to have regard to the elderly country guidance which described the methods of abuse used by the Turkish security forces which did not necessarily leave marks, fails to recognise that the judge was simply comparing what the appellant had described (blood everywhere) with the lack of apparent after-effects (two scars).
13. I was referred to the decision of the Court of Appeal in *Reza Fatemi Reza v SSHD* [2006] EWCA Civ 552, particularly the passage in paragraph 35 which criticises the approach of an adjudicator who had based his rejection of the appellant's explanation on the narrow ground that he thought it most unlikely that the appellant would not have had marks on his body if he had been beaten as claimed. The adjudicator had made that finding, not on the basis of any medical evidence, but on the basis of his own knowledge and experience. The Court expressed some doubt about the soundness of that finding. However, as Mr Trumpington acknowledged, any error in this approach did not lead the Court to allow the appeal. That is because this was only one of a string of reasons given by the adjudicator for rejecting the credibility of the appellant's account. So it is in the current appeal. As set out above, the judge gave seven main reasons for rejecting the claim and even if there were serious ground for "uneasiness" regarding his assessment of the absence of further scarring, that would be insufficient reason to pull down the entire edifice decision.
14. If I understood him correctly, Mr Trumpington also attempted to challenge the judge's reasoning on the basis that he had made a decision on the appellant's credibility before turning to the medical evidence to see whether, to use his word, it "rescued" the claim. However, whilst it is true the judge dealt with the medical evidence towards the end of his findings and conclusions, this does not show that he had already made up his mind before considering the report. That much is clear from the fact he

summarised his conclusions in paragraph 39, after he has dealt with the report. There is therefore no force in this challenge.

15. The next point taken by Mr Trumpington was that the judge failed to give any reasons not to accept that the appellant's psychiatric symptoms, as found by Dr Hajioff, could be attributed to torture as claimed. It appears from paragraph 38, that the judge reasoned that, because he did not consider the scars were caused in the manner claimed, it followed that the appellant's psychiatric symptoms should not be attributed to torture either. Mr Bramble argued that the judge did not need to go further than he did.
16. As said, Dr Hajioff is a consultant psychiatrist and his conclusions on mental health therefore deserve respect. Obviously, PTSD has been caused by a traumatic experience of some sort. However, it does not necessarily follow that this must have been related to the incidents described by the appellant. The report does not consider alternative causation and, I see no fault in the logic of the judge in concluding that there must be another cause in the circumstances that he was not satisfied the appellant had been beaten up, as claimed.
17. In sum, I do not accept that the judge's assessment of the medical evidence was flawed such that his overall assessment of the appellant's credibility was vitiated by material error of law.
18. The second ground of challenge was characterised by Mr Bramble as mere disagreement with the judge's decision. I agree. It was for the judge, having heard the appellant give evidence, to assess whether his account was sufficiently detailed regarding his claimed political activities so as to warrant the adverse attention of the Turkish authorities. There is no basis for suggesting the judge was not conscious of the risk factors described in the country guidance. In paragraph 16, he considered whether conditions in South-East Turkey had worsened following the 2016 coup attempt.
19. The grounds do not show that the judge misunderstood the evidence. Mr Trumpington attempted to argue that, contrary to the reasoning of the judge, the Turkish authorities are more likely to have recruited someone with a low profile to inform on his colleagues because such a person was less likely to face regular detention. That is a theory but it does not mean the judge was not entitled to take the opposite view.
20. Mr Trumpington also questioned the judge's use of the word "maybe" when setting out the appellant's account of delivering leaflets. He argued there was no basis for the uncertainty introduced by the use of that word given the appellant had been consistent and clear about this activity. However, in my judgement, this is also simply a matter of the judge's manner of self-expression. Paragraph 31 should be read as meaning that, even if the appellant's account were taken at its highest as regards his political activities, they did not amount to much. That was a view he was entitled to take.

21. There is no error of law in the First-tier Tribunal's decision to dismiss the appeal and the decision shall stand. The appellant's appeal is dismissed.

Notice of Decision

The Judge of the First-tier Tribunal did not make a material error of law and his decision dismissing the appeal is upheld.

Signed

Date 9 May 2018

Deputy Upper Tribunal Judge Froom