



**Upper Tribunal**

**(Immigration and Asylum Chamber)  
PA/00355/2020 (P)**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Decided Under Rule 34 (P)**

**Decision & Reasons  
Promulgated**

**On 25 October 2020**

**On 28 October 2020**

**Before**

**UPPER TRIBUNAL JUDGE KEKIĆ**

**Between**

**MURAT KURT**

**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation (by way of written submissions)**

**For the appellant: Ms S Panagiotopoulou of Counsel instructed by  
Montague Solicitors**

**For the respondent: Mr E Tufan, Senior Home Office Presenting  
Officer**

**DECISION AND REASONS**

**Background**

1. This appeal comes before me following the grant of permission to appeal to the appellant by First-tier Tribunal Judge Easterman on 30 June 2020 against the determination of First-tier Tribunal Judge Meah promulgated on 13 March 2020 following a hearing at Taylor House on 28 February 2020.
2. The appellant is a Kurdish national of Turkey born on 6 May 1976. He initially entered the UK illegally in March 2005 and subsequently claimed asylum with his wife. He claimed to have been politically active and provided a detailed account of persecution and torture at the hands of the Turkish authorities and also claimed that his family had suffered persecution. His application was refused on 7 April 2005 and the joint appeals against that decision were dismissed by Judge Woodhouse on 18 July 2005. The judge found that the appellant had fabricated his entire claim. Following the loss of his appeal the appellant absconded and when eventually apprehended he was removed from the UK in November 2008. However, he re-entered the UK illegally once again. He claims this was in November 2015 but he did not contact the Home Office until June 2017. His submissions were accepted as a fresh claim but rejected on 6 December 2019. The appellant claimed that on his return to Turkey he had been detained and tortured and that the persecution continued.
3. The appeal came before First-tier Tribunal Judge Meah at Taylor House. The appellant was the only witness; although his brother and cousin were present at the hearing, neither gave oral evidence.
4. The judge had regard to the oral and documentary evidence and to the previous Tribunal's decision. He found that the appellant was lacking in credibility, that his explanation for not referring anywhere in his application or witness statement to being tortured undermined the account, that his documents were unreliable and that although evidence could have been provided by his brother and cousin, it had not. He noted that the appellant had failed to claim asylum on arrival and had waited for a year and a half before doing so. He considered that the appellant could safely return to Turkey and accordingly dismissed the appeal. No article 8 claim was pursued.
5. The appellant successfully sought permission to appeal and I shall deal with his grounds below. In granting permission Judge Easterman expressed the view that the judge was entitled to take the first determination as his starting point on credibility and was entitled to reach some of the conclusions that he did, but he found that ground 4 was arguable. He did not limit argument on the other grounds.

**Covid-19 crisis: preliminary matters**

6. The matter would ordinarily have been listed for a hearing following the grant of permission but due to the Covid-19 pandemic and need to take precautions against its spread, this did not happen and instead directions were sent to the parties on 11 August 2020. They were asked to present any objections to the matter being dealt with on the papers and to make any further submissions on the error of law issue within certain time limits.
7. The Tribunal has received written submissions from the appellant dated 25 August 2020 and from the respondent on 3 September 2020. No further response has been received from the appellant to date although he had the opportunity to reply to the respondent's submissions. I now consider whether it is appropriate to determine the matter on the papers.
8. In doing so I have regard to the Tribunal Procedure (Upper Tribunal) Rules 2008 (the UT Rules), the judgment of Osborn v The Parole Board [2013] UKSC 61, the Presidential Guidance Note No 1 2020: Arrangements during the Covid-19 pandemic (PGN) and the Senior President's Pilot Practice Direction (PPD). I have regard to the overriding objective which is defined in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008 as being *"to enable the Upper Tribunal to deal with cases fairly and justly"*. To this end I have considered that dealing with a case fairly and justly includes: dealing with it in ways that are proportionate to the importance of the case, the complexity of the issues, etc; avoiding unnecessary formality and seeking flexibility in the proceedings; ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; using any special expertise of the Upper Tribunal effectively; and avoiding delay, so far as compatible with proper consideration of the issues (Rule 2(2) UT rules and PGN:5).
9. I have had careful regard to all the evidence before me before deciding how to proceed. I take the view that a full account of the facts are set out in those papers, that the arguments for and against the appellant have been clearly set out and that, contrary to what the grounds maintain, the issues to be decided are uncomplicated. It is insufficient for the appellant to claim that an oral hearing is necessary because there is a history to the appeal and the judge should be appraised of the full facts without explaining why those facts cannot be ascertained from the papers. The appellant has been afforded the opportunity to participate by way of submissions. It is unclear what else would be achieved by his participation given that no oral evidence would be required at this stage. I am satisfied that I am able to fairly and justly deal with this matter on the papers and now proceed to do so.

### **Submissions**

10. For the appellant, Ms Panagiotopoulou's submissions are a reproduction of the six grounds of appeal put forward in the application for permission to appeal and add nothing further. The first was that the judge failed to refer to country guidance when assessing credibility and the risk on return. The second complaint is that the judge placed undue emphasis on the first determination when he was dealing with events that had occurred since that time. The third ground is that the judge gave inadequate or no reasons for rejecting the claim that the appellant was a HDP member, failed to apply Tanveer Ahmed principles to the assessment of the evidence and applied a higher standard of proof. Fourthly, it is argued that the judge erred in holding that the statements of the witnesses were unsigned. It is maintained that the bundle of 24 February 2020 contained signed copies. The fifth ground argues that the judge failed to give the appellant an opportunity to respond to a 'new issue', i.e. the delay in claiming asylum. Finally, the sixth ground argues that the judge placed undue emphasis on the appellant's answers without having regard to Chiver (10758) and allowing his conclusions on one aspect of the claim to influence his findings on other aspects.
11. Attached to the submissions is a statement from the representative who attended the hearing and three copy letters. I shall deal with these documents below.
12. Mr Tufan, for the respondent, confirms receipt of the appellant's submissions. With respect to the basis on which permission was granted (ground 4), he is unable to comment on whether or not the statements in the bundle to the Tribunal were signed but submits that even if the judge was mistaken about this, this could not be material as the judge considered the evidence in detail and was entitled to find that the grant of refugee status to the appellant's brother and cousin had not been shown to have any relevance to his own claim given the absence of evidence as to the basis of their claims. Mr Tufan points out that the findings with respect to the statements were only one part of the adverse credibility findings made and that the judge was entitled to have regard to the appellant's previous failed application and appeal and the fact that he had not been found a witness of truth. Mr Tufan submits that the appellant's claim to have been tortured in Turkey after his removal from the UK had been mentioned for the first time at the hearing and that the judge was entitled to reject it as credible. He submits that the judge did consider Tanveer Ahmed principles. It is submitted that the judge was not required to give reasons to deal with every argument and that the attribution of weight was a matter for the judge. The grounds did not disclose any material errors in the determination.

13. The appellant's representatives have not taken the opportunity offered to them to reply to the respondent's submissions which were forwarded to them by email on 3 September 2020.

**Discussion and conclusions**

14. I have had regard to the history of the appellant's claims and to the previous and present determinations and all the other material before the Tribunal. As I indicated earlier, there is nothing in that history that requires an oral hearing as the appellant sought. The facts are well set out in the papers and I have considered them with care.
15. Judge Easterman singled out ground 4 as the most meritorious and I have examined the papers on the file with respect to identifying the statements referred to by the judge. As stated in the grounds, these are contained in the appellant's bundle dated 24 February 2020 which was delivered by hand to the Tribunal and marked as received on 26 February 2020. The appellant's statement of evidence appears at pp.1-4 and is signed but the two statements from his brother and cousin at 6-7 and 8-9 respectively are not. The grounds appear to refer to two bundles with a supplementary bundle being served on 24 February 2020 but no details are given of the when or how the first one was served. The bundle of 24 February 2020 which is the one referred to as having the signed statements, only contains unsigned statements and nothing on the front sheet or index refers to it as a supplementary bundle. This was the bundle the judge had and he was entirely correct to say that the statements from the appellant's brother and cousin were unsigned.
16. I note that with the appellant's written submissions there is a statement from Mr Sandhu who represented the appellant at the hearing. He states that two copies of what appears to be the same bundle were served; one prior to the hearing and one on the date of the hearing. It is not specified whether the signed copies were in one or both of the bundles and if in one, whether it was the bundle served at the hearing. If the latter is the case, that copy is missing from the Tribunal file and I have not had sight of it.
17. However, even if the second copy of the bundle had contained signed copies of the statements, I cannot see how they would have altered the outcome of the appeal. As the judge noted, the statements are extremely brief, and provide no detailed information. The judge also noted that both the appellant's brother and cousin were present at court but chose not to give oral evidence even when the option was canvassed by the judge (at 38). The contents of the brief statements, even if signed, were thus untested and the judge was entitled to find that there

was limited evidence before him of the family's claims. He also properly noted that the absence of any direct engagement with how their claims impacted upon the appellant was a matter raised in the decision letter and that the appellant had, therefore, been put on notice that such evidence would have been helpful. No reasons have been given for why oral evidence was not called and there has been no challenge to the judge's conclusion that the claims of the two relatives may well be entirely different to what the appellant had claimed in his own application (at 37). I note that family members also failed to give evidence at the previous hearing and that this was remarked on by the judge on that occasion at paragraph 84 of her decision. It should be noted also that the limited evidence concerning other relatives' asylum claims was just one of numerous adverse findings made.

18. The same ground further argues that the nature of the claims made by the appellant's brother and cousin was irrelevant and that the mere grant of refugee status to them was an additional element of risk for the appellant. The grounds do not clarify on what basis this assertion is made and nor were any submissions made on the matter to the First-tier Tribunal Judge. The risk factors in IK (Returnees - Records - IFA) Turkey CG [2004] UKIAT 00312 are alluded to in the grounds but the grounds do not point to one which would cover this and, although A (Turkey) CG [2003] UKIAT 00034 considered an appellant's family connections with a separatist organisation as a risk factor, Judge Meah could not have assessed such a risk without evidence of the nature of the claims made by the appellant's relatives over and above the sparse information contained in their written statements.
19. The complaint that the judge placed "*undue emphasis*" on the previous Tribunal's determination is not made out. Firstly, a judge is required to take an earlier determination as his starting point. Secondly, the grounds fail entirely to provide any examples of the emphasis given by the judge to Judge Woodhouse's decision. Looking at his determination it may be seen that he properly directed himself in accordance with the Devaseelan principles and set out the previous judge's findings (at 19-21). There then follows some 26 paragraphs of findings on the present claim before reference is made (at 48-49) to the previous adverse findings. I fail to discern any emphasis being placed on the previous findings let alone undue emphasis and in the absence of any reference in the grounds to specific examples of this, I conclude that this ground has no merit either. It is unhelpful for representatives to present such sweeping statements without clarification and, indeed, without any justification.

20. It is also argued that inadequate or no reasons were given for the judge's rejection of the appellant's claim to be a HDP member. That is not correct. First of all, a paragraph cannot be read in isolation. The judge noted that the appellant had previously been found to have fabricated an asylum claim, that he had absconded after his appeal was dismissed, that although he had claimed to have been arrested, detained and tortured upon removal to Turkey he had made no mention of that at all when he claimed asylum for a second time, either in his interview or his statements and that this was raised for the first time in oral evidence. The judge rejected the claim that his solicitors (who were still representing him) had advised him to only mention his claim of torture at the hearing, noting that this would have been poor advice from an experienced firm of representatives and that had this been the case, no evidence to confirm it had been offered even though it could easily have been adduced. The judge noted that the appellant had been able to return to his home and live there without any difficulties or reprisals. The judge also considered the documentary evidence of membership with Tanveer Ahmed principles in mind, contrary to what the grounds claim, but found them to be unreliable. The issues surrounding the documents, as set out in his determination, were also matters that had been raised in the decision letter and so the appellant had had ample opportunity to try and resolve them. It was in this context that the judge found that the appellant's claim to be involved in Kurdish activism was not made out. Again, it is not helpful for representatives to cherry pick a single paragraph from the several which set out findings and to complain that the reasons therein are inadequate. Determinations must be read as a whole.
21. The judge is also criticised for not considering the principles in Chiver when considering the appellant's answers however the appellant gave wholly unsatisfactory evidence. It cannot be said that he was in parts credible when his entire claim was riddled with difficulties. Nor is it helpful to single out paragraphs 40-43 when the preceding paragraphs also show that the appellant's evidence was unbelievable. His claim to have decided only to mention the incident of torture at the hearing is a prime example of the incredible evidence given. When he made his asylum claim, he could not have known that he would be refused or have a hearing and it is ludicrous to suggest that he did not disclose the crux of the claim to the Secretary of State at his interview because he was saving this for a judge.
22. It is argued that the judge unfairly raised a new point; the delay in the making of the asylum claim. It is maintained that the appellant had claimed through his solicitors in 2015 and that had this point been raised at the hearing he could have clarified this. The appellant would have been aware from the decision letter

and the COHID sheet that the respondent had recorded the date of the second asylum claim as 29 June 2017. It would not, therefore, have been news to him that there was no record of any 2015 application. In any event, he was questioned about this at the hearing (at 39-45) and the issue was referred to in the respondent's submissions at the hearing. The judge's Record of Proceedings note that the Presenting Officer even asked for any evidence that he had claimed asylum in 2015 and that Mr Sandhu in re-examination asked further questions about the making of the claim. It would have been open to the appellant's representatives to seek an opportunity to provide any evidence the solicitors had of earlier correspondence with the Home Office or to raise objections to the matter being raised but he did not do so.

23. I note now that with the appellant's submissions, Mr Sandhu in the statement I have referred to above, also maintains that contact was made with the Asylum Screening Unit on 25 November 2015. Copies of correspondence from the solicitors chasing up the application (but omitting the unique reference number they say was given to him) are also provided. These documents were not before the judge and were not provided with the grounds for permission to appeal however I am prepared to accept that they were sent. Plainly they did not reach the right department of the Home Office as there is no record of any application having been made prior to June 2017.
24. I now consider whether this matter renders the determination unsustainable. I cannot find that it does. The judge made reference to the delay in the making of an asylum claim towards the conclusion of his findings and it is the final reason he gave for rejecting the appellant's claim. It is plainly not a determinative issue in itself and I cannot see how a different conclusion would have been reached, given all the other serious issues raised, even if the judge had accepted that an earlier claim had been made.
25. The appellant also argues that the judge did not assess his claim in the context of IK. It would have been preferable had the judge considered the country guidance but given that the appellant was devoid of credibility and had also previously been found to have relied on a bogus claim, it is difficult to see how a consideration of IK would have assisted. The discrepancies were so glaring and difficulties so serious that the appellant could not have been credibly found to fall within any of the IK risk categories except for being Kurdish and plainly that alone is insufficient to merit a grant of asylum. It is noteworthy that the appellant appears to have left his wife behind on this occasion and there is no suggestion that she or any other family member have come to any harm or that there have been any attempts by



the authorities to find him. As someone without any political profile, he would be able to safely return to Turkey and rejoin his family.

26. It follows that I find that the judge reached a sustainable decision and that his determination does not contain any errors of law.
27. No article 8 claim was pursued.

**Decision**

28. The decision of the First-tier Tribunal does not contain any errors of law and it is maintained. The appeal is dismissed.

**Anonymity**

29. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I continue the anonymity order made by the First-tier Tribunal judge.
30. Unless the Upper Tribunal or a court directs otherwise, no reports of these proceedings of any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant from the content of the claim.

Signed

R. Kekić

Upper Tribunal Judge

Date: 26 October 2020