**IN THE UPPER TRIBUNAL**
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-000485

First-tier Tribunal Nos:
PA/51037/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**
**On 22 May 2023**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**AHMET SERT**
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Ms S Panagiotopoulou, instructed by Gulsen & Co, Solicitors
For the Respondent: Mr N Wain, Senior Home Office Presenting Officer

**Heard at Field House on 19 April 2023**

## DECISION AND REASONS

1. The appellant appeals with permission against a decision of First-tier Tribunal Judge Cary, promulgated on 21 December 2022, dismissing his asylum and protection appeal.

## Background

2. The appellant is a citizen of Turkey, and an Alevi Kurd. He is now 47 years old and entered the United Kingdom on 2 February 2017 and claimed asylum on the basis that he was at risk from the Turkish authorities on account of his involvement with pro-Kurdish political groups. He states that he has previously been detained and tortured by the Turkish authorities owing to his political activities; and, in the past a warrant has been issued for his arrest. It was his case before the Tribunal that the authorities are still interested in his whereabouts as shown by messages exchanged with his family about raids on the family home and that someone of his profile is at risk of further arrest and torture on return.

3. The appellant's case is also that he is suffering from depression, anxiety and thoughts of self-harm, attributed by his doctor to his experiences in Turkey which is said to be corroborative of his claim.

4. The Secretary of State did not accept the appellant's claim. She did not accept that he had been tortured, nor that he had come to the adverse attention of the authorities as claimed. She did not consider either that as a low-level supporter of HDP or BDP that he would be at risk of persecution on return.

5. The appellant's previous asylum claim was refused on 22 May 2019. His appeal to the First-tier Tribunal was dismissed for the reasons set out in the decision of Judge Manyarara, promulgated on 1 August 2019.

6. It is sufficient to record at this stage that Judge Manyarara's conclusion was that the appellant's account was not credible in its entirety. She did not accept that he is of ongoing interest to the Turkish authorities and in effect rejected his claim to have been detained and tortured.

7. Subsequent to the dismissal of his asylum appeal, the appellant made further submissions which although refused on 22 May 2019, attracted a right of appeal on 22 September 2020. Although the Secretary of State accepted that there was a fresh claim, she upheld the decision to refuse his asylum claim for the reasons set out in the letter of 14 February 2022.

## The Hearing Before the First-tier Tribunal

8. The judge heard evidence from the appellant. He also heard evidence from both representatives. In addition, he had before him a bundle provided by the appellant, the stitched bundle.

9. The judge accepted [5] that the appellant should be treated as a vulnerable witness. He noted also he was required to make his decision by reference to all the relevant evidence including assessing the appellant's credibility and in doing so had to take into account the appellant's age, level of education, health and the evidence he had given before and after refusal of his application. [24]

10. Having summarised Judge Manyarara's decision [28] to [32] and directing himself in line with Devaseelan [2002] UKIAT 00702 at [34] the judge directed himself also that it was for the appellant to show that the documents on which he relied were reliable in line with Tanveer Ahmed [36].

11. The judge concluded that he could not place reliance on the letters from Mr Bulgarı (the appellant's Turkish lawyer) which set out the steps he had taken to obtain information from the authorities if he was wanted. The judge did not accept the documents showing that he was a ballot box observer in 2008 or 2014 were reliable [40], nor did he accept [41] that the letter from the local muhtar was reliable. He found also that the WhatsApp messages from family in Turkey were not capable of being relied upon.

12. The judge attached little weight to the letter from the appellant's doctor, Dr Nemeth given the lack of any basis for the conclusions reached in the letter of 23 June 2022, noting also [44] to [45] that the other medical evidence did not provide much support for the appellant's claim.

13. The judge did not consider that any of the appellant's medical problems he now has could be related to any ill-treatment in Turkey, the medical evidence simply not being there to justify any such a conclusion, nor was he satisfied that his apparent lack of credibility could be excused by any medical problems [47].

**Grounds of appeal**

14. The appellant sought permission to appeal on the basis that the judge had erred in law:-

(i) in not properly applying Devaseelan by not taking into account the reasons given by the appellant for not providing earlier the letter from the local muhtar or the ballot box observers cards;

(ii) in making mistakes of fact when assessing the reliability of the letters from the lawyer and in failing to permit the appellant the opportunity to explain why the lawyer decided to write to various departments; and, even though further reasons were given, there was still an error of law;

(iii) in improperly concluding that the letter from the muhtar made no sense and is difficult to follow, this approach infecting the assessment of that letter;

(iv) in failing to have regard to the totality of the medical evidence in assessing its relevance to the appellant's claim, leading to erroneous conclusions as to the credibility of the appellant's claim, in particular failing to note evidence that the appellant had been subjected to torture, evidence he had been under a psychiatrist for many years in

Turkey, and in attaching little weight to the report of Dr Nemeth for improper reasons;

(v) in failing to have regard to vulnerability in assessing credibility, there being no proper consideration of the vulnerability in assessing the claim.

15. In reaching my decision I have had regard to the stitched bundle produced for the First-tier Tribunal hearing which corresponds to the bundle also provided to me through CE-file.

**Consideration of the grounds**

16. It is appropriate to consider grounds 4 and 5 together given that they overlap; ground 5 goes to overall credibility of the appellant, it is one of overarching relevance.

17. Ground 5 bears a remarkable similarity to the ground pleaded (and roundly rejected) in SB (vulnerable adult: credibility) Ghana [2019] UKUT 398. That is apparent from the discussion by the Tribunal at paragraphs [58]to [64]. At paragraphs [59] and [60] the Upper Tribunal held: -

> "59. The appellant's final ground of appeal contends that, having decided to treat the appellant as a vulnerable witness, at no point did Judge Plumptre 'appear to give effect to' this fact, when making her findings of fact including, importantly, the findings of credibility.
>
> 60. There is no merit in this challenge. The fact that a judicial fact-finder decides to treat an appellant or a witness as a vulnerable adult does not mean that any adverse credibility finding in respect of that person is thereby to be regarded as inherently problematic and thus open to challenge on appeal".

18. There is no indication in the grounds that the judge failed to put into place any of the steps necessary. As the applicable guidance states:

> 3. The consequences of such vulnerability differ according to the degree to which an individual is affected. It is a matter for you to determine the extent of an identified vulnerability, the effect on the quality of the evidence and the weight to be placed on such vulnerability in assessing the evidence before you, taking into account the evidence as a whole.

19. It is evident from the judge's decision at [47] that he accepted the appellant does have current medical problems.

20. It is asserted in ground 5 that there was no basis for the judge stating that the appellant's apparent lack of credibility cannot be excused by any medical problems he has. That, in turn, requires an assessment of the judge's approach to the medical evidence which is the focus of ground 4.

21. The first and perhaps most obvious point, is that this is not a case in which there was a medicolegal report prepared setting out in detail, for

example a psychiatric evaluation or an assessment of any scarring that the appellant might have. Whilst, as Ms Panagiotopoulou submitted, there was an entire section of the bundle devoted to medical evidence, this is in the form of notes and correspondence between various different medical and allied professionals rather than reports addressed to a court or Tribunal. This material takes up a total of 28 pages.

22. The first observation with regard to the medical evidence is that it is not for a judge to go hunting through medical notes which are in their nature brief, looking for passages which may benefit an appellant. Second, dealing with the specific matters raised in paragraph 10 to the grounds I find them to be without merit. The judge's observation [44] that the medical notes from the surgery contain no reference to torture is correct. Yet, it is said that the judge erred in not taking into account a letter from Barnet, Enfield and Haringey Mental Health Trust of 10 May 2017. That letter refers to the appellant having been under the care of a psychiatrist for many years in Turkey and contains the statement "he (the appellant) tells me he has been subject to torture in Turkey". There is no assessment of that statement by the author of the letter, and I do not accept that any weight could properly be attached to that as probative of the assertion, given that it does nothing more than report the appellant's own account which had previously been disbelieved by Judge Manyarara. It is of note that the quotation in the grounds omits the words "he tells me", altering significantly the import of the words.

23. The judge did not err in noting that there is no reference in Dr Nemeth's report to the appellant's psychiatric treatment in Turkey; that is correct. As noted above there is reference to him being under psychiatric care for many years in Turkey but it is difficult to understand how that is of any proper relevance to the issues before the judge given the limited evidence of what that treatment was. In the context of the judge's decision, this is taken out of context. The judge was manifestly entitled to attach little or no weight to Dr Nemeth's letter. Although the doctor was expressly requested in the email from the appellant's solicitors to

> "confirm in writing that the report is independent that you have not been influenced by the client or her legal representatives. Please also confirm your qualifications and experience relevant to the assessment of these cases. Please also make sure your report complies with the Istanbul Protocol".

24. Given the contents of the letter from Gulsen & Co, the judge was manifestly entitled to conclude that the doctor was not aware that this was a letter to be produced to the Tribunal. Despite the request in the email from Gulsen & Co set out above, there is no reference in his letter to any understanding of his duties to the Tribunal, nor qualifications and experience relevant to the assessment of psychiatric conditions or more particularly that any diagnoses were as a result of tortures from the authorities. Again, in the grounds, there is a failure properly to cite what was written in the judgment. The judge wrote "indeed, Dr Nemeth may have been totally unaware that his letter was intended for use in evidence

as I note it is addressed to the appellant's solicitors". What is averred in the grounds, is "therefore, it is submitted that the FTTJ's conclusion that the GP was totally unaware that his letter was intended for use in evidence is entirely unsustainable". But that was not what the judge wrote. The grounds distort what was a possibility into a definite statement.

25. Contrary to what is asserted, the lack of a statement that the doctor was aware of his duties, etc, is a relevant consideration in assessing the medical evidence. Dr Nemeth's letter is brief in the extreme and provides no proper reasoning for is analysis or conclusion. It is little more than a bare assertion that the appellant has anxiety disorder, suicidal thoughts, post-traumatic stress disorder and that it was previously diagnosed and controlled by medication, that he had a longstanding history of depression.

26. There is no proper basis for the submission that the judge improperly drew inferences adverse to the appellant from the correct observation that the letter he refers to [45] from the emergency department of East Suffolk and North Essex NHS Foundation Trust dated 6 March 2022 that he had been tortured by the authorities. That, in the context of him having said that he had been "tortured in Turkey by a political party and fears that his family's lives could be in danger" is a proper observation. Again, there is a quotation out of context which has the effect of distorting the judge's findings, and presenting them in a potentially misleading way.

27. Taking these observations together the judge was clearly entitled to conclude that there was not in this case any reliable report indicating that the appellant suffers from memory problems other than the fact that there is a self-report that he suffers from recall problems. That is simply recorded in his computerised medical notes by a doctor who saw him at Green Cedars Medical Centre on 23 August 2017 where it is stated as follow "is here with nephew translating forgets easily wakes up early a.m. then p.m. nap throughout night not sleeping well feels like harming himself, never did".

28. It is surprising that experienced Counsel could seek to draw out of that an indication that the appellant was in fact suffering from memory problems.

29. Contrary to what is asserted in the grounds the judge undertook a careful analysis of the medical evidence which was, in the absence of a proper medico-legal report, difficult to assess. As was noted in SB, the guidance provided in respect of vulnerable witnesses was that it was for him to determine the extent of an identified vulnerability, the effect of the quality of the evidence and the weight to be placed on such vulnerability in assessing the evidence, taking into account the evidence as a whole.

30. Simply because an individual suffers from mental health problems does not mean that they cannot recall what happened. The cold reality of this appeal is that there was no proper medical evidence that the appellant suffers from defect of memory or recall or that any of his diagnoses could

explain the inconsistencies. Accordingly, it cannot be argued that the judge erred as is averred in grounds 4 or 5. There is no merit in them.

Ground 1

31. This ground is defective in that it fails properly to identify properly what the appellant's explanations for his failure to provide the letter from the local muhtar or the ballot box observers card earlier were.

32. In respect of the latter the judge was manifestly entitled given the principles set out in **Devaseelan** to note [40] the appellant had never previously mentioned his role as a ballot box observer. The judge was manifestly entitled to consider that that cast doubt on the reliability of the documents, and the judge was also entitled to note that no explanation had been forthcoming as to why the HDP would retain any documents many years old in particular the observer introduction card issued in 2008. There is therefore no merit in this ground.

Ground 2 – Approach to the Letters from the Turkish Lawyer

33. The judge's consideration of this letter is set out at paragraphs 37 to 39 of his decision. He observed [38] that if this were a genuine attempt to find out if the appellant was wanted by the authorities reference would have been made to the warrant which is said to have been issued to assist the case. It is, however, of some concern that the judge refers to none of the letters produced by Mr Bulgarı being on headed notepaper which is incorrect. They do have headings which could have been generated by a computer. But the same can be said of many official letters in the United Kingdom including those issued by the Home Office and the Courts and Tribunals Service from a printer rather than on headed paper.

34. The judges statement the he cannot discounts the possibility that it was produced on "a home computer" is not of assistance and indicates an improper approach. As is submitted in the grounds at 7(i) the letters are all stamped by the lawyer and the stamp provides his professional address, telephone number and bear a handwritten signature over the stamp. There is some merit also in the submission that the judge erred in concluding that because the lawyer had written to various different departments that the appellant had no real idea who issued the alleged warrant against him.

35. The first observation I make is that the appellant did not see the warrant and is relying on what was told to him. Second, a lawyer is in a better position to know whether there is a possibility of which branches of the authority issued it and to make the appropriate investigation. I am not, however, satisfied that these defects are sufficient to render this part of the judgment unsafe. The judge gives several reasons for doubting the reliability of the letter noting the lack of any follow-up and the failure to reply to any warrant in the letter to the appellant [38]. Also of relevance is the fact that the letters to the various authorities are produced which

explain that the reason details are not given of any numbers as the client did not have this material.

36. Viewing these paragraphs in the context of the decision as a whole and the findings as to credibility and bearing in mind the law set out in Tanveer Ahmed, I am not satisfied that the judge's approach to the letters from the lawyer involved the making of an error of law.

Ground 3 – The Muhtar's Letter

37. Again, there is a misquotation from the decision. The judge wrote "the letter does not make much sense and is difficult to follow". What is said in the grounds is that "the letter makes no sense and is difficult to follow".

38. Again, I am troubled by a yet another distortion of what the judge wrote. At best this comment is an aside and the judge gives cogent reasons as to why little weight can be attached to the letter, noting the lack of reference to the issue of any arrest warrants and the failure without good explanation to produce it at the previous hearing. It cannot be said that the judge's observation that the letter makes no sense given that there are a number of grammatical errors in it was an irrational approach to the evidence, let alone one capable of giving rise to a material error of law.

## Conclusion

39. For the reasons set out above I conclude that the decision of the First-tier Tribunal did not involve the making of an error of law.

40. I am, however, concerned at the number of passages in the grounds where what the judge wrote has been inaccurately cited or taken out of context giving a false impression in an apparent attempt to strengthen the appellant's challenge. One such error in a set of grounds might be unfortunate, but where there are three of four, a pattern begins to emerge. Judges considering applications for permission to appeal rightly assume that grounds drafted by counsel who have an overriding professional duty to the court not to mislead it, can be relied upon.

## Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

Signed Dated: 27 April 2023

Jeremy K H Rintoul
Judge of the Upper Tribunal
Immigration and Asylum Chamber