Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10988/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
on 10 January 2019	**on 28 January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

F S
(ANONYMITY DIRECTION CONTINUED)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr P Bonavero of Counsel instructed by Howe & Co, solicitors
For the Respondent: Ms S Cunha of the Specialist Appeals Team

Anonymity Direction

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 his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings

ERROR OF LAW DECISION AND REASONS

The Appellant

1. The Appellant is a Turk born in 1989: the Respondent did not accept his claimed Kurdish ethnicity. He has completed his military service. He has an older sister with leave to remain in the United Kingdom by reason of her marriage. He came to the United Kingdom in the early autumn of 2017 to visit her and returned to Turkey.

2. On 14 November 2017 he arrived and claimed asylum because he feared persecution by the Turkish authorities on account of his membership of the HDP, a Kurdish party and his Kurdish ethnicity.

The Respondent's decision

3. On 4 September 2018, the Respondent refused the Appellant's application for international surrogate protection. His claims to be Kurdish and to have been detained and tortured by the authorities on three separate occasions were not believed. The Respondent relied on the background information contained in the US Department of State Report published in 2015 which noted a marked decrease in the official censure or harassment of Kurds and the Respondent's own Country Information and Guidance that although Kurdish people may be the most discriminated ethnic minority in Turkey they are able fully to integrate into society in all spheres of social and political life and that a great number have successfully integrated into Turkish society and adopted the values and social organisation of the Republic: see paragraphs 61-63 of the Respondent's reasons for refusal letter of 4 September 2018.

4. The Respondent considered the expert medical evidence presented by the Appellant added little weight to his claim, partly because the expert had not found any of the Appellant's scars were "diagnostic of" the causes of them claimed by the Appellant and the expert had not expressly ruled out the possibility of self-harm.

Proceedings in the First-tier Tribunal

5. The Appellant appealed and by a decision promulgated on 31 October 2018 Judge of the First-tier Tribunal Devittie found him not credible in all aspects of his claim other than his ethnicity and that he would not be at risk on return to Turkey. He dismissed the appeal.

6. On 27 November 2018 Judge of the First-tier Tribunal Grant-Hutchison granted permission to appeal because it was arguable the Judge had erred in the eight areas identified in the grant of permission.

The Upper Tribunal Proceedings

7. The Respondent did not file a response pursuant to Procedure Rule 24. The Appellant attended the hearing with his older sister. Mr Bonavero

informed me the Appellant had very little English. I attempted to explain to him the purpose of the hearing but it was evident that without an interpreter he could not understand. He was able to confirm his current address. His sister also had little English.

Submissions for the Appellant

8. Mr Bonavero opened by referring to paragraph 8(2) of the Judge's decision. The quotation from the expert medical evidence before the Judge was inaccurate in two respects. The first was that the quotation stated "the scars on the forehead are particular of blunt instrument injuries" and the second was that it stated "this is consistent with a cigarette burn". Mr Bonavero accepted that this matter had not been identified in the grounds for appeal. He had raised it with Ms Cunha for the Respondent who had, and in my opinion quite properly, no objection to it being raised at the hearing.

9. The report to be found as item G of the Respondent's bundle in fact stated at paragraph 36 that the scars were judged **typical** of blunt instrument injuries to that area" and at paragraph 37 the scar on the back of the left wrist was judged "to be **highly consistent** with a cigarette burn". The emphases appear in the original report.

10. Mr Bonavero submitted that these two mis-quotations were material and had a serious impact on the Judge's consideration of the Appellant's scarring and the medical evidence. Further, in view of the references to "typical" and "highly consistent" in the medical evidence, the Judge had erred in paragraph 10 of his decision by failing to give adequate reasons to reject the medical evidence. Mr Bonavero also subsequently in further submissions argued that a consideration of paragraph 10 showed the Judge had found certain aspects of the Appellant's evidence to be so unsatisfactory as to support an extensive adverse credibility finding. Having made that finding, he had then used it to reject the medical evidence, falling into the error identified in *Mibanga v SSHD [2005] EWCA Civ.367* of not assessing the evidence holistically before making a credibility finding.

11. He noted that at paragraph 7 the Judge had accepted the background evidence was not inconsistent with the Appellant's account and at paragraph 10 that the medical evidence and Turkish hospital receipts produced by the Appellant supported his claims to have been detained and tortured. At paragraph 9(3) the Judge had accepted that "there have been persons arrested simply on account of being supporters of the HDP".

12. At paragraph 9(2) the Judge had stated that "the circumstances leading to his third detention that caused him to use the Visa to leave Turkey does not suggest that he had done anything that would have brought him to the attention of the authorities" but the Judge had gone on to record the Appellant's evidence that immediately before the third detention the Appellant had attended a meeting at the local HDP headquarters and that

a friend had dropped him off at his house which the authorities raided shortly afterwards, that same night. This was precisely the type of situation which the Judge had accepted in his following paragraph 9(3) might happen.

13. Further, in reaching his adverse credibility findings on this aspect of the Appellant's account, the Judge had noted that there was no reference to and no specific allegations had been put to the Appellant about what had become of the friend who took him home or other friends with whom he associated in his political activity. There was no indication the Appellant had actually been asked about such matters. In any event, Mr Bonavero queried whether what may or may not have happened to the Appellant's friend who took him home or his other friends, if any, was materially relevant to the Appellant's core account.

14. Addressing the Judge's comments at paragraph 9(4) he submitted the Judge had erred in drawing any inferences, and in particular adverse inferences, from the Appellant's choice of a Turkish rather than a Kurdish interpreter. I noted that when screened on arrival the Appellant had said his languages were first Kurdish and then Turkish and at interview reply 19 he had indicated that he had spent substantial periods of time in Istanbul. He had of course served in the military. Mr Bonavero submitted that the chosen language for an interpreter at a hearing was neither weight for nor reason to make an adverse credibility finding.

15. The Judge had also used as grounds for his adverse credibility finding the Appellant's inability to identify the year in which the HDP had been founded. This was unreasonable having regard to the frequency with which the name of the principal Kurdish party in Turkish politics re—formed with a changed name following the authorities' pattern of outlawing the party from time to time.

16. These errors whether alone or in aggregate amounted to material errors of law and the decision should be set aside.

Submissions for the Respondent

17. Ms Cunha submitted the Judge's finding at paragraph 7 that the background evidence was not inconsistent with the Appellant's account did not mean the Appellant's account was credible.

18. The Appellant claimed to have come from a politically active family which spoke Kurdish recorded at paragraph 3(4) of the decision and paragraph 7 of his witness statement. If so, the Judge was entitled to take this into account in assessing credibility in the light of the Appellant's ignorance of the foundation date of the HDP and his choice to give evidence in Turkish rather than Kurdish. He was also entitled to consider notable that having claimed to have been detained and tortured on two previous occasions by the Turkish authorities the Appellant also claimed that he experienced no difficulties on return to Turkey in 2017.

19. She referred to the medical report and submitted that the substitution of "typical" with "particular" was a typographical, voice recognition program or proof-reading error and no weight should be attached to it. Whether the Appellant's scars were "consistent" or "highly consistent" with the claimed cause was of little importance because the Judge had found the Appellant had not been detained and tortured as he had claimed.

20. The Judge had looked at the evidence holistically, addressed the medical evidence and made several reasoned adverse credibility findings. At paragraph 13 he had dealt with the Appellant's 'sur place' claim. His conclusions were sound and the decision should be upheld.

Response for the Appellant

21. Mr Bonavero responded that the Judge's treatment of the medical evidence fell into the error identified in *Mibanga* and additionally, the errors in the quotation from the medical report at paragraph 8(2) compounded the error.

22. The Respondent had made no submissions in relation to the apparent inconsistency in the decision between, on the one hand, paragraphs 9(2) and (3) about the Appellant attending the local HDP headquarters and immediately thereafter being arrested with, on the other, the accepted background evidence that being a supporter of the HDP was on occasion sufficient for the authorities to detain a person. In addition, the Judge's treatment in respect of the Appellant's friend who took him home and his associates at the end of these two sub- paragraphs was, in the absence of evidence that any specific questions on the point had been put to the Appellant, speculative.

Error of Law Consideration

23. At the end of the hearing I stated that I found there were errors of law in the decision of the First-tier Tribunal for reasons which would follow in this written decision and which I now give.

24. At paragraph 9 of his decision, the Judge makes no direct specific adverse finding but raises issues which go more to the plausibility of the Appellant's evidence than its credibility. The references to the lack of evidence about what happened to the Appellant's friend who took him home on the night of his last detention before leaving Turkey and the fate of any political friends are, particularly in the absence of evidence that the points were put to the Appellant at the hearing, speculative. The comments about the choice of interpreter are inappropriate and certainly the choice is not a matter which could go to the credibility of this Appellant.

25. At paragraphs 10 and 13 the Judge makes extensive adverse credibility findings but the reasoning to support them is either absent or inadequate. The findings are principally based on several suggested implausibilities

and not inconsistencies in the evidence. The Judge does not address how he reaches an adverse credibility finding when he has accepted that the account given by the Appellant is not inconsistent with the background evidence. He appears to have reached his credibility finding on these matters and then has given little weight to the medical evidence which whether inadvertently or not has been mis-quoted. It would be wrong in the circumstances to find that this could not have had an adverse impact on the Judge's thought processes which led him to his conclusions. In addition, with reference to paragraph 10 of the decision in particular, the Judge has not looked at all the evidence in the round before reaching his conclusions.

26. For these reasons, the decision contains material errors of law and is unsafe. It is set aside with no findings of fact preserved.

27. Having regard to the nature and extent of the fact-finding which will be required at any re-hearing of the appeal, I conclude the appeal should be remitted to the First-tier Tribunal for hearing afresh.

Anonymity

28. The First-tier Tribunal decision contains an anonymity direction although it gives no reason why it is proportionate to the need for transparency in the Tribunal's administration of justice and refers to the 2005 Procedure Rules and not Rule 13 of the 2014 Procedure Rules. There was no request to me for it to be continued. However, in the circumstances I propose to continue the anonymity direction until the next hearing when the Appellant should make a specific and reasoned request for it to be continued, failing which I see no reason why the direction should be continued.

SUMMARY OF DECISION

The decision of the First-tier Tribunal contains errors of law is set aside.

The appeal is remitted to the First-tier Tribunal for hearing afresh with no findings preserved.

Anonymity direction continued.

DIRECTION

There is no longer a copy of the Appellant's bundle in the Tribunal file and the Appellant is directed to file a copy not later than two weeks before the next hearing date.

Signed/Official Crest Date 15. i. 2019

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal