EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

[2022] CSIH 3
P841/20

Lady Paton
Lord Turnbull
Lord Doherty

OPINION OF LADY PATON

in the Appeal

by

YUCEL GUVENC

Petitioner and Appellant

against

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For Judicial Review of a decision of the Upper Tribunal (Immigration and Asylum Chamber) dated 6 June 2020 refusing permission to appeal to itself

Petitioner and Appellant: Caskie; Drummond Miller LLP (for Maguire, Solicitors, Glasgow)
Respondent: Massaro; Office of the Solicitor for the Advocate General

19 January 2022

[1] I am grateful to Lord Turnbull for outlining the background to this appeal and the arguments in favour of granting it, and also to Lord Doherty for providing counter-arguments advocating refusal.

[2] When weighing the arguments for and against granting the appeal, I have found it difficult to exclude the possibility that the FtT's assessment of the appellant's credibility may have been adversely affected by the omissions referred to by Lord Turnbull and

Lord Doherty. In particular, in paragraph 44 of the FtT decision, there is no mention of the appellant's explicit statement in answer 4.1 of the screening interview that his "life was under threat", nor is there any mention of an amendment to answer 2.1 which referred to "physical and psychological torture". Where an asylum-seeker does not mention significant matters such as threat to life or torture, any subsequent claims may seem less credible, even taking into account the guidance in decisions such as *YL* [2004] UKIAT 00145 at paragraph 19. The omission in paragraph 44 of the fact that the appellant explicitly stated at the screening interview that his "life was under threat", and the fact that an amendment to answer 2.1 of the screening interview explicitly referred to both "physical and psychological torture", seems *prima facie* to result in an incomplete or inaccurate narration of fact which could have the effect of disadvantaging the appellant by casting doubt on any subsequent such claims. As a result I have a concern about the FtT's assessment of credibility in this particular case.

[3] Whether or not the point can be regarded as "*Robinson* obvious" (see *R* v *Secretary of State for the Home Department, ex parte Robinson* [1998] QB 929), the difficulty I have in dismissing the possible prejudice to the appellant is such that I have concluded that there is an "extremely sound reason for … compelling the parties to [this] appeal to engage with a matter that neither of them has identified" (Lane J in *The Secretary of State for the Home Department* v *AZ* [2018] UKUT 00245 (IAC)). I consider that the point constitutes an arguable error of law (namely possible reliance upon a materially inaccurate or incomplete factual premise as a basis for a credibility assessment). I have also concluded that the error is strongly arguable and that there is a strong prospect of success. These conclusions, coupled with potentially dire consequences were the appellant to be returned to Turkey, are

sufficient in my view to satisfy the "second appeals test" (paragraph 22 of *JD (Congo)* v *Secretary of State for the Home Department* [2012] 1 WLR 3273).

[4] In the result therefore, for the reasons given by Lord Turnbull, I agree that the Lord Ordinary's interlocutor of 22 January 2021 should be recalled; permission to proceed should be granted on the limited basis outlined by Lord Turnbull; and the case should be remitted to the Outer House to proceed as accords.

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[5] The appellant is a 41 year-old Turkish national of Kurdish ethnicity who sought asylum based upon his political opinion, race and religion. The Secretary of State refused his application and he was unsuccessful in his appeal against that decision before the First-tier Tribunal (the "FtT"). The Upper Tribunal (the "UT") refused to grant leave to appeal to it in its decision dated 6 June 2020 and the appellant seeks to challenge that

decision by judicial review. On 22 January 2021 the Lord Ordinary refused permission for the petition to proceed. The appellant challenges his decision in the present appeal brought under section 27D(2) of the Court of Session Act 1988.

[6] The proposed judicial review argues that the UT erred in law in failing to recognise an arguable error of law on the part of the FtT and that the UT gave inadequate reasons for its decision. It is appropriate for this court to examine the decisions of both tribunals. The appellant maintains that in this case the "some other compelling reason" limb of section 27B(3)(c) of the 1988 Act is satisfied.

The First-tier Tribunal

[7] The FtT accepted the appellant's evidence that he was Kurdish but held that he had not established that he was of the Alevi faith. His evidence that he was taken into custody by the Turkish authorities and tortured by them was rejected, as was his evidence that he been asked to become an informant for the Turkish security forces. The FtT concluded that the appellant did not have a high profile in the People's Democratic Party ("HDP") but was a supporter of it. Having arrived at these conclusions, the FtT held the appellant had not established that he was at risk of being persecuted because of his ethnicity or because of his political or religious beliefs and dismissed his appeal.

[8] The FtT made a number of adverse credibility findings against the appellant. It rejected the evidence that he was of the Alevi faith for the reasons which are given at paragraph 42 of the decision, in short that the appellant appeared to know very little about that faith.

[9] In assessing the appellant's account of having been taken into custody and tortured by the Turkish authorities, the FtT noted that when asked at his screening interview briefly

to explain all the reasons why he could not return to his home country the appellant only replied "because of being Kurdish and Alevi". It noted that when asked whether he had ever been detained for any reason he replied that he had not.

[10] At paragraph 46 of the decision the FtT noted that five days after the screening interview the appellant's solicitors submitted an amendment to the record of that interview. It noted that the appellant did not expand upon his reasons for not being able to return home by, for example, mentioning fearing persecution because of his political opinion. It also noted, as being particularly significant, that the appellant said nothing about his alleged detention and arrest by the Turkish authorities.

[11] At paragraph 47 the FtT referred to the statement prepared by the appellant in advance of his substantive asylum interview. It noted that in this statement he gave details about being arrested on several occasions, including providing information as to mistreatment and torture whilst in police custody. It noted that in this statement he referred to an offer to act as an informant as a condition of being released.

[12] The reasons given by the FtT for rejecting the appellant's evidence on these matters can be found in paragraphs 45, 47, 48 and 50 of the decision. These were, first, there was no suggestion in the screening interview transcript that the appellant was having difficulty with the interpreter and he signed the record confirming that he had understood all the questions asked. Second, the appellant's "silence" about his detention and torture during the screening interview could not be excused by his diagnosis of PTSD, which included a coping mechanism of disassociation, since the appellant clearly had a significant ability to recall these events when he prepared his statement. Third, he gave inconsistent answers concerning the chronology of the times when he was detained during the course of his statement. Taking these matters in combination the FtT concluded, at paragraph 50, that:

> "… the Appellant has seriously damaged his credibility by failing to tell the Respondent at the time of the screening interview all of the reasons why he feared returning to Turkey. His failure to mention his arrest and detention was a material omission and it cannot be excused for the reasons that he claims. Furthermore, he subsequently amended his screening interview record but said nothing about his encounters with the security forces. … If one looks at these matters collectively, the obvious conclusion that I must draw is that he was not arrested and/or detained or tortured/mistreated by the Turkish security forces as he claims."

The FtT considered the issue of whether the appellant was politically active with the HDP in Turkey. It noted his own evidence that he was a supporter but not a member of that party. Taking account of the evidence led, including the appellant's witness Mr Ucer, the FtT concluded that the appellant was not a prominent person or someone who had a high profile in the HDP.

The Upper Tribunal

[13] The UT noted that the FtT had taken account of the relevant considerations in arriving at its decision as to the appellant's credibility. Appropriate consideration was given to the evidence relied on by the appellant and proper account was taken of the relevant country guidance. The UT accordingly concluded that no error of law was identified in the decision sought to be challenged.

The proposed grounds of challenge

[14] The grounds of appeal relied upon before the UT were described as "14 detailed Grounds of Appeal". In large part they comprised a narrative account rehearsing the import of the submissions made to the FtT and contending that the decision arrived at was wrong. Ground 1 contains only narrative and makes no claim to identify an error of any description.

[15] In summary, the propositions advanced in the grounds of appeal were:

Ground 2 –the FtT erred in law by leaving out of account the context in which the appellant's screening interview was conducted.

Ground 3 – the FtT erred in law by failing to take account of the distinction between detention and arrest in giving weight to the appellant's answer that he had never been arrested (sic).

Ground 4 – in assessing the appellant's credibility the FtT erred in law by leaving out of account the evidence given by the psychologist of disassociation as a consequence of past traumatic events.

Grounds 5 and 6 – the FtT erred in law by taking account of the fact that the appellant had signed his screening interview to confirm that he had understood all of the questions asked.

Grounds 7, 8 and 9 – the FtT erred in law in its treatment of the evidence given by the witness Mr Ucer.

Grounds 10, 11, 12 and 13 – the FtT erred in law by failing to assess the evidence in line with the relevant country guidance.

Ground 14 – the FtT erred in law by reaching its conclusion that it was not plausible that the appellant was able to leave Turkey if he was of interest to the police in the absence of any evidence concerning exit controls which would have entitled that view to be reached.

Appellant's submissions

[16] The note of argument, which set out submissions in support of all the grounds of challenge with the exception of ground 14, was adopted. In oral submissions the focus of

the appeal was narrowed by addressing only the FtT's treatment of the appellant's screening interview and the evidence of Mr Ucer.

[17] An introduction to the screening interview was read to the appellant which explained that he would be asked for a brief outline of why he was claiming asylum and that he would be asked for full details of his experiences and fears at a later interview. Against that background, at Question 4.1, he was asked to explain briefly why he could not return to his home country. The appellant explained that he attempted to give more information but was told that was to be provided at a later substantive interview. He gave an appropriate summary. Account should have been taken of the purpose of the interview, as it had been explained, and of the diagnosis of PTSD with the associated coping mechanism of dissociation in assessing the answer given. The FtT failed to do so, or failed to provide adequate reasons as to what effect was given to that evidence and why.

[18] The appellant was not in a position to agree the accuracy of the transcript of his interview as it had been taken through translation. The transcript was written in English and was not read back to him in his own language. The FtT was not entitled to take account of the fact that the appellant had signed the interview form.

[19] There was a distinction between arrest and detention which was recognised in the country guidance case of *IA and Ors (Risk Guidelines-Separatist) Turkey CG* 2003 UKIAT 00034. The FtT failed to take account of that in assessing the appellant's reason for answering as he did when asked whether he had ever been detained.

[20] In assessing what weight to give to inconsistencies between what was said at a screening interview and later evidence the FtT required to approach the issue with the caution described in the case of *JA (Afghanistan)* v *SSHD* [2014] EWCA Civ 450. It had not done so.

[21] The FtT accepted the evidence of the appellant's witness Mr Ucer but failed to give effect to it. The witness gave an account of what the appellant had told him about his treatment at the hands of the Turkish authorities, which was correctly characterised as hearsay. The judge ought still to have had regard to the truthfulness of that account in the absence of any reason to suggest that the appellant had been lying to Mr Ucer.

[22] The FtT ought to have taken these factors into account cumulatively in assessing the appellant's credibility. It did not do so and failed to lawfully assess the appellant's evidence.

[23] The errors of law identified were strongly arguable and the consequences for the appellant of being returned were dire. Accordingly the proposed grounds for review met the compelling reasons test.

Respondent's submissions

[24] The proposed grounds of review do no more than re-argue the submissions advanced to the FtT and complain about the weight attached to various parts of the evidence. The weight to be given to evidence properly analysed was entirely for the FtT. The FtT was entitled to conclude that if the appellant had indeed been taken into custody and tortured then his failure to mention those events at his screening interview was astonishing. The FtT took account of the psychological evidence led and gave appropriate weight to it. The FtT correctly noted that no complaint was made about the interpretation or accuracy of the transcripts of interview. It was entitled to take that fact into account and did not err in law in doing so.

[25] The FtT properly understood and took account of the country guidance information before it.

[26] The reasons given by the Upper Tribunal were adequate. They were addressed to, and intended to be understood by, someone well versed in the facts of the case and familiar with the arguments – *Waqar Ahmed and Others* v *SSHD* 2020 CSIH 59. In these circumstances refusal of permission may be made in short form.

[27] The appellant had failed to show that any of the proposed grounds of review had a real prospect of success and the second appeals test was not met.

Decision and reasons

[28] Grounds 2, 3, 4, 5 and 6 all concern the decision arrived at in light of an assessment of the appellant's screening interview. Grounds 7, 8 and 9 concern the evidence of Mr Ucer. It may be convenient first to address the grounds which were not the focus of oral submissions.

[29] In grounds 10, 11, 12 and 13, propositions are advanced concerning the relevant country guidance material which was before the FtT. Submissions in support of these propositions are set out at paragraphs 19 to 22 of the appellant's note of argument. The contention that the FtT failed properly to take account of the risk factors identified in the country guidance case of *IA and Ors*, or failed to take account of the Country Policy and Information Note ("CPIN") relied on, has no substance. The FtT specifically addressed itself to the question of what risk the appellant would face as a low-profile supporter of the HDP on return to Turkey. At paragraph 56 of the decision it referred to the case of *IA* and correctly identified the various factors which require to be considered. It recognised that these factors required to be assessed in the round. At paragraph 57 of the decision the FtT explained that it took account of the CPIN. The specific paragraphs of that Note referred to by the FtT are to be found in the section setting out the Secretary of State's analysis. The

suggestions that the FtT has failed to take account of the information section of the Note, and has simply accepted the Secretary of State's analysis without applying its own assessment, are without foundation and do not identify an arguable error of law. No submissions in relation to ground 14 are to be found in the appellant's note of argument. In those circumstances I need say no more about it.

The witness Ucer

[30] Mr Ucer is a former member of the Turkish Parliament. He lives in Belgium where he was granted asylum. In his statement he explained that he had known the appellant and his family for a very long time. He spoke about the appellant's activity in the HDP. At paragraph 49 of its decision the FtT refers to the passage in Mr Ucer's statement in which he mentions the appellant's detention. It notes:

> "The evidential value of this is very limited for the simple reason that it is hearsay. It is based on the Appellant's self-reporting. Mr Ucer was not present when the alleged torture and mistreatment took place and he can do no more than take the Appellant's account at face value."

This is a generous interpretation of the witness's statement. The relevant passage reads:

> "I heard about Yucel being detained and interrogated by the authorities. I knew that he was under detention and was being badly treated by the authorities."

[31] Mr Ucer's statement does not explain from whom he learned of the appellant's detention, when he heard of this or in what circumstances. It does not explain how he knew that the appellant was being mistreated. The FtT was plainly entitled to give whatever weight it thought appropriate to this piece of evidence. The criticisms advanced under the grounds of appeal directed at the evidence of Mr Ucer do not identify an arguable error of law. Proposed grounds 7, 8 and 9 are not arguable.

The screening interview

[32] The remaining grounds of review all address the adverse view as to the appellant's credibility which the FtT came to as a consequence of what it saw as information provided later which was not mentioned at the appellant's screening interview.

[33] The proposition advanced in grounds 5 and 6 to the effect that the FtT was not entitled to take account of the fact that the appellant had signed the record of his interview, acknowledging that he had understood all the questions asked, is without substance. The FtT refers to this at paragraph 45 of its decision in the context of explaining that the transcript had been read over and disclosed no suggestion that the appellant was having difficulty with the interpreter. This was an entirely fair and appropriate exercise for the FtT to have undertaken. As an addendum to that statement, the observation is made that the appellant confirmed that he had understood all of the questions. The part of the form containing this confirmation requires to be read to the appellant and it is factually correct that he so confirmed. Nothing more was taken by the FtT than that.

[34] It should also be noted that the appellant made no complaint about having any difficulty in understanding what he was being asked. He had the benefit of an interpreter assisting by telephone. No arguable point of law is identified in these grounds.

[35] The proposition identified in ground 3 and the submissions in support of it are confused and misconceived. The ground proceeds upon the basis that the appellant was asked in his screening interview whether he had ever been arrested and that some form of distinction between arrest and detention was available such as would explain why the appellant answered that he had not. Contrary to what is stated in the ground and in the note of argument, the question asked of the appellant at screening interview was:

> "5.4 Have you ever been detained, either in the UK or any other country for any reason?"

The answer recorded is:

> "No"

The appellant attempts to provide an explanation for this at paragraph 27 of his statement by claiming that he told the interviewing officer that he had been detained on several occasions between 2011 and 2014. He asserts that the interpreter must have made a mistake confusing detention and arrest. As can be seen, when the question asked is properly understood, this explanation makes no sense. The FtT was entitled to reject the appellant's account. No arguable error of law is identified.

[36] The proposition identified in ground 4 relates to the accepted evidence that the appellant suffered from PTSD and had an associated coping mechanism of disassociation. At paragraph 39 of the decision it is noted that:

> " … some leeway can be given to the Appellant concerning his ability to recall past events. This is because in his professional opinion, Dr Morrison believes that the Appellant had to develop coping mechanisms within the area of disassociation to prevent him from being exposed to traumatic memories of a particular period in his life and, as such, it is reasonable to assume that there may be inconsistencies in terms of the account of that time period."

[37] Having reached this view, it was a matter for the Tribunal to determine what weight it was appropriate to give to the evidence of the appellant's condition and how much "leeway" his condition might afford him by way of explaining inconsistent accounts. Having reviewed and assessed the content of the screening interview, the subsequent information provided by the appellant and the explanations provided in his statement, all as set out in paragraphs 43 to 47 of the decision, the FtT concluded that the appellant's failure to provide any information about his repeated detention and torture in his screening

interview could not be excused by his PTSD. It is therefore wrong to state that the FtT failed to take account of the medical evidence in assessing the appellant's credibility. No arguable error of law is identified in this ground.

[38] The sole remaining basis of challenge is to be found in ground 2. The argument is in two parts. First, in making an adverse credibility finding against the appellant on the basis of what was said, and not said, the FtT left out of account the advice given to the appellant by way of introduction, namely that he was only to give a brief outline of his reason for claiming asylum. Second, the FtT failed to adopt the cautious approach described in the case of *JA (Afghanistan)* before relying on apparent inconsistencies between what was said at a screening interview and in later statements.

[39] In the case of *YL (*2004) UKIAT 00145 the UT gave general guidance as to the significance of discrepancies between a screening interview and further evidence. It did so by explaining the purpose and limitations of a screening interview and drawing attention to the circumstances in which such an interview can come to be conducted. In the present case the FtT specifically referred to this guidance and correctly identified the relevant considerations. It cannot be argued that the decision then arrived at ignored the context in which the answers to the questions asked were given. It ought also to be kept in mind that in the petitioner's case the interview was not conducted when he was tired after a long journey. He left Turkey on 5 May and flew to Rotterdam where he stayed in a hotel until 12 May when he then took a short flight to London. The appropriate level of caution was applied. No arguable error of law is identified in this ground.

[40] Despite this analysis of the proposed grounds of review, the court is left with a concern. In statement 7 of the petition the appellant outlines his contentions about the way in which the FtT treated the screening interview. He states:

> "Whilst the weight to be given to particular adminicles of evidence is (in general) a matter for the FtT Judge that does not apply where the FtT Judge failed to have regard to relevant matters."

This is an uncontroversial proposition. The answer on behalf of the respondent includes the statement that:

> "The credibility of the Petitioner is at the heart of the FtT decision. The FtT's rejection of his account of his treatment in Turkey was fatal to his claim."

It is plain that the appellant's credibility was at the heart of the decision arrived at by the FtT. At paragraph 43 of the decision, having outlined the relevant considerations specified in the case of *YL*, the judge stated:

> "Notwithstanding this, I have very serious concerns about what he said and what he did not say at that interview."

At paragraph 50 the assessment of the appellant's credibility was drawn together in the statement:

> "I believe that the Appellant has seriously damaged his credibility by failing to tell the Respondent at the time of the screening interview all of the reasons why he feared returning to Turkey. His failure to mention his arrest and detention was a material omission and it cannot be excused for the reasons that he claims."

Such an assessment would be beyond challenge if the discrepancies relied upon were truly present and had been properly assessed. As set out at paragraph [5] above, the FtT proceeded upon the understanding that when asked briefly to explain all the reasons why he could not return to his home country the appellant only replied "because of being Kurdish and Alevi".

[41] Examination of the record of the interview discloses the additional words - "my life was under threat". Secondly, as noted at paragraph [6] above, the FtT considered that it was particularly significant, that the appellant said nothing about his alleged detention by the Turkish authorities in the amendment to the record prepared by his solicitor. That

observation is correct insofar as it goes but it is to be noted that an amendment to the answer to Question 2.1, enquiring about medical conditions, was set out. That amendment reads:

> "I have mental issues due to physical and psychological torture …"

Neither of these statements is mentioned by the FtT in the summary of the appellant's position which is set out at paragraph 44 of the decision.

[42] If the appellant is to be seen as having made claims of being tortured and of his life being under threat at the time of the screening interview that would run contrary to much of the thrust of the FtT decision. There is however, no ground of review to the effect that the FtT failed to take account of either of these two pieces of information when assessing the credibility of the appellant's claim.

[43] This raises the question of whether the court can, or should, grant permission to proceed with the judicial review upon a point not raised in the petition. In the case of *The Secretary of State for the Home Department* v *AZ* [2018] UKUT 00245 (IAC) Lane J said at paragraph 70:

> "there must be an extremely sound reason for … compelling the parties to an appeal to engage with a matter that neither of them has identified"

At paragraph 69 he explained that a judge must not grant permission to appeal on a ground not mentioned in the application unless satisfied that the ground identified is one which has a strong prospect of success.

[44] The Tribunal's failure to consider the import of the amendment to the answer to Question 2.1, as noted above, cannot be dismissed as minor or immaterial as it may be said that it goes to the heart of the reason why he was seeking asylum. It can be argued that the FtT's inaccurate summary of facts in paragraph 44 provided a basis for, and strongly influenced, its ultimate decision on credibility. A "threat to life" and "torture" are important

matters where someone is claiming to be unable to return to a country, and a failure to mention those important matters at the screening interview might well give rise to doubts about subsequent statements detailing threat to life and torture. Such a misrepresentation of core facts may arguably comprise an error of law, giving an inaccurate premise for subsequent reasoning. The omission may also arguably be an error of law which can be categorised as a failure to take into account relevant and material considerations which ought to have been taken into account. It may be argued that the UT in turn erred in law by failing to identify the FtT's error in law.

[45] In these circumstances, I am persuaded that the arguable errors of law identified meet the test described by Lane J. They give rise to strongly arguable errors of law. That conclusion, coupled with potentially dire consequences if the appellant were to be returned to Turkey, is sufficient to satisfy the requirements of section 27B(3)(c)(ii) of the Court of Session Act 1988. I would grant permission to proceed with the Judicial Review, but limited to the grounds identified in paragraph [44] above. *Quoad ultra* I would refuse permission to proceed. The pleadings will require to be amended to reflect the basis upon permission has been granted.

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Introduction

[46] I am grateful to Lord Turnbull for setting out the circumstances of this appeal. I regret that I disagree with your Ladyship and your Lordship as to the appropriate disposal.

[47] In my opinion none of the grounds of challenge which are set out in the petition pass the test in section 27B(3)(c) of the Court of Session Act 1988. It was not suggested that any of

those grounds raises an important point of principle or practice (section 27B(3)(c)(i)). The contention was that there is some other compelling reason for allowing the application to proceed (section 27B(3)(c)(i)). The compelling reason here was said to be that the grounds disclosed one or more strongly arguable errors of law on the part of the FtT and the UT, coupled with truly drastic consequences for the appellant were he to be returned to Turkey (*JD (Congo)* v *Secretary of State for the Home Department* [2012] 1 WLR 3273, judgment of the court delivered by Sullivan LJ at para 22). I am not satisfied that any of the grounds relied upon in the petition provide a good basis for saying that it is strongly arguable that the FtT (or in its turn the UT) erred in law in a material respect. Indeed, none of them even persuade me that it is arguable that the tribunals erred in law in a material respect.

[48] I turn then to the two other matters which were not raised in the petition or in the petitioner's written or oral submissions, but in respect of which your Ladyship and your Lordship consider that permission to proceed should be granted.

Life under threat

[49] The first matter is that in paragraph 44 of its decision the FtT does not mention that the petitioner stated in his screening interview that he could not return to Turkey because his life was under threat. Question 4.1 asked:

> "Part 4 – Basis of asylum claim
>
> 4.1 Please BRIEFLY explain ALL of the reasons why you cannot return to your home country?"

The appellant's answer was: "Because my religion is Alevi and Kurdish my life was under threat." At paragraph 17 of its decision the FtT noted the respondent's consideration of this part of the interview:

> "During his screening interview he said that he was claiming asylum because his life was at threat because of his religion and ethnicity but he did not mention his political opinion or his support of the HDP and he did not amend this at a later stage."

At paragraph 44 the FtT stated:

> "When he was asked at question 4.1 briefly to explain all of the reasons why he could not return to his home country he is recorded as saying because of being Kurdish and Alevi."

The appellant's position was that it was because he was a Kurdish Alevi that he would face persecution if he returned - his life would be at threat for that reason. In my view the FtT fully understood that that was what was said at the screening interview. It had narrated it at paragraph 17. It is not something which it overlooked or left out of account.

[50] Even if, contrary to my view, the FtT ought to be understood not to have had regard to the fact that the appellant had said that his life was under threat, in my opinion it is not a point which the court should take *ex proprio motu.* It is not *Robinson* obvious (*R* v *Secretary of state for the Home Department, ex parte Robinson* [1998] QB 929). Standing the FtT's findings (in particular, that the appellant was not an Alevi (because he demonstrated no real knowledge of Alevi beliefs); that he said he had never been detained at the screening interview and that he made no mention at that time of torture or ill-treatment by the police; that his later accounts of detention and arrest were inconsistent and contradictory; and that he failed to claim asylum in the Netherlands, a safe country, (and had no adequate explanation for not doing so), it cannot be said that it is a point which has strong prospects of success. On the contrary, the prospects of success on this point seem to me to be negligible.

The amendment to the answer to Question 2.1

[51] Question 2.1 at the screening interview was:

> "Do you have any
> - medical conditions
> - disabilities
> - infectious diseases
> - medication which you are or should be taking?"

The appellant's answer was: "Blood pressure tablets, Anti-acid for stomach"

[52] Question 2.3 was: "Is there anything else you would like to tell us about your physical or mental health?". The Appellant's answer was: "No."

[53] Question 5.4 was: "Have you ever been detained, either in the UK or any other country for any reason?" The appellant answered: "No."

[54] The screening interview took place on 12 May 2019. After the interview the appellant instructed solicitors to act on his behalf. On 20 May 2019 those solicitors prepared a "Statement of Amendments to Screening Interview Record" which the appellant signed. That Statement was sent by the solicitors to the respondent on 28 May 2019. Among the proposed amendments within it was the following amendment to the answer to Question 2.1:

> "I have mental issues due to physical and psychological torture and had an operation and treatment for bladder cancer. I also have blood pressure."

No amendment to the appellant's answer to Question 5.4 was proposed.

[55] In my view it would be wrong to proceed on the basis that the FtT was unaware of the amendment to the answer to Question 2.1 and left it out of account. The FtT stated at paragraph 30 of its decision that it had taken account of all relevant material and had given it anxious scrutiny. It made clear that it was setting out the core evidence relied upon by the appellant. There is no indication that the amendment to the answer to Question 2.1 featured at all in the submissions advanced for the appellant to the FtT.

[56] Moreover, it did not feature in the application to the UT or in the grounds advanced to this court. Indeed, when I raised the matter with counsel for the appellant he did not seek to make anything of it.

[57] Once again, even if, contrary to my view, the FtT ought to be treated as having left this matter out of account, in my opinion it is not a point which the court should take *ex proprio motu.* It is not *Robinson* obvious. It cannot be said to give rise to a ground of challenge which has strong prospects of success. The plain fact of the matter is that at his screening interview the appellant indicated clearly in his answer to Question 5.4 that he had never been detained. He did not seek to correct that answer even after he had had more than a week to reflect upon it and had had the benefit of consulting solicitors. Moreover, at no point in the interview or the amendments did he state that he had been tortured or ill-treated by the police. Once those facts are considered along with the FtT's findings that the appellant was not an Alevi; that his later accounts of detention and arrest were inconsistent and contradictory; and that he failed to claim asylum in the Netherlands, a safe country, and had no adequate explanation for not doing so, the prospects of a successful appeal appear to me to be very poor indeed.

Conclusion

[58] For the foregoing reasons I would refuse the appeal.