



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

Appeal Number: AA/05839/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 26 November 2014**

**Determination
Promulgated
On 16 December 2014**

Before

**THE HONORARY LORD BURNS
DESIGNATED JUDGE MURRAY**

Between

HUSEYIN ER

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Whitwell, Home Office Presenting Officer

For the Respondent: Mr Rhuanno, Trott & Gentry LLP, Solicitors

DETERMINATION AND REASONS

1. The Appellant is a citizen of Turkey born on 10 April 1991. He appealed against the decision of the respondent dated 29 July 2014 refusing to grant him asylum and/or humanitarian/subsidiary protection and/or on human rights grounds. The appeal was heard by Judge of the First Tier Tribunal M A Khan on 16 September 2014. The appeal was dismissed and a determination promulgated on 1 October 2014.

2. An application for permission to appeal was lodged and permission was granted by Judge of the First Tier Tribunal P J G White on 21 October 2014. The grounds of application are that the Judge in finding that the Appellant lacked credibility, failed to give adequate reasons for stating that the Appellant's evidence was "vague and evasive" and "contradictory and inconsistent" and that there was procedural unfairness in the Judge hearing this appeal, as he relied extensively on his own determination in the Appellant's previous appeal, which he had dismissed.
3. The Appellant's representative submitted that it was not appropriate for the First Tier Judge to hear this case, as he had already heard and dismissed the Appellant's appeal against the decision of the Respondent refusing him entry clearance to the United Kingdom as a student. That determination was promulgated on 27 October 2009.
4. The representative submitted that the Judge did not raise this matter at the Hearing. We pointed out that the Judge referred to this in paragraph 44 of his determination, stating that no one had an objection on this issue. It transpired that the Appellant's representative did not know if this had been raised at the First-tier hearing. The Presenting Officer did not know if it had been raised. We pointed out that the actual determination in the student appeal had been presented to the First-tier Tribunal and to the Appellant's representative at the start of the Hearing by the Presenting Officer and Judge M A Khan's name was at the top of this determination so the Judge and the Appellant's representative must have been aware of this at the Hearing.
5. The Appellant's representative submitted that the Judge made findings in his Asylum determination that the evidence of the Appellant and his witness was inconsistent. This was when he was comparing the evidence at the First-tier hearing with the student determination. The representative submitted that the judge made no express reference to any other inconsistencies and that the Judge did not give adequate reasons for his credibility findings or his findings relating to these inconsistencies.
6. We asked the representative if he was contending that this produced unfairness and asked if he believed this was a procedural irregularity. We also asked if the representative had had notice of this would it have been a problem? The representative stated that it would only have been a problem if there had been an objection and the Judge had carried on with the Hearing in spite of this. We put to the representative that there is no way we can know if the Appellant's previous representative would have objected. The representative submitted that the Judge should have raised this matter.
7. The Presenting Officer submitted that at paragraph 44 of the Asylum determination the Judge states that no objection was raised. He submitted that as the determination was handed to him and to the appellant's representative on the day and was in the hands of the Presenting Officer then the parties must have been aware of the situation.

8. The Presenting Officer submitted that there is only one inconsistency based on the student determination and this is the basis on which the Appellant was expelled from school. Paragraph 26 of the refusal letter refers to this, "Your brother provides a contradictory account as to why you left school which damages the credibility of your claim". He submitted that the Judge was entitled to consider the refusal letter and we were referred to paragraphs 30 and 31 of the determination where this inconsistency is highlighted. He submitted that the Appellant had the opportunity to address this inconsistency at the Asylum Hearing. This could have been dealt with in oral evidence, so it cannot be said that the Appellant has been prejudiced because of this. He submitted that this was a deficiency brought out at the student Hearing and then at the Asylum Hearing. It was pointed out that in the record of proceedings on the Tribunal's file the Appellant admitted lying to his brother about the reason why he was expelled from school.
9. The Presenting Officer referred to the ground of appeal relating to the standard of proof and whether the Judge misapplied the standard of proof. He referred to paragraph 15 of the Asylum determination which narrates the correct burden and standard of proof and submitted that we have not been alerted to any paragraph in the determination where he has erred on this issue.
10. The Presenting Officer then dealt with the credibility issues raised in the Asylum determination and the oral evidence given at the Hearing. The reason for the Appellant being expelled from school is referred to at paragraph 46 as a credibility issue. He submitted that the Appellant's father's injuries, referred to at paragraphs 48 and 50 raise credibility issues, as it is not clear whether his father had an accident in 2009 or was tortured and beaten up by the Police. With regard to the Judge stating that the Appellant has been vague and evasive, this was in relation to the Appellant's evidence about the football match at paragraph 49 and his evidence at paragraph 32 about what happened to his father. He submitted that the judge has given a sufficient explanation for all these credibility findings. These are based on the content of the oral evidence at the 2014 Hearing and do not relate to the student Hearing.
11. The Presenting Officer submitted that there is no material error in the Judge's determination.
12. The Appellant's representative submitted that the degree of reasoning by the Judge is inadequate. He submitted that some of the issues are more central than others but when the core of the evidence is looked at, more detailed reasoning is required. He submitted that there are material errors of law in the Judge's determination.

Determination

13. We have to decide whether there are errors of law in the Judge's decision promulgated on 1 October 2014.

14. With regard to the procedural unfairness issue it is not clear whether this matter was raised at the Hearing. In paragraph 44 of the determination the Judge states that there were no objections to him hearing the appeal. Based on the evidence on file the determination promulgated by Judge Khan on 27 October 2009 was handed to the appellant's representative and the Judge by the Presenting Officer at the start of the Hearing. Judge Khan's name is at the top of this determination and it must have been evident to the parties and to the Judge that he had already dealt with an appeal by this Appellant. There was ample opportunity for an objection to be made. It was not necessary for the Judge to refer to this. There is no procedural unfairness because Judge Khan had already heard an appeal by the appellant on a different issue.
15. If the student application had been dealt with by another Judge that determination would have been on file and its terms would have had to be considered by Judge Khan. The only matter in his previous determination which was referred to by the Judge in his asylum decision was the issue of why the Appellant was expelled from his high school. This matter was dealt with at the Asylum Hearing in oral evidence and based on the record of proceedings the Appellant admitted that he had lied to his brother about this.
16. With regard to the standard of proof and burden of proof the Judge has referred to the correct standard and burden of proof at paragraph 15 of the determination and there is nothing in his determination which makes us believe that the Judge used the wrong standard or burden of proof.
17. With regard to the credibility issues the Judge dealt with credibility on the evidence before him, in particular the oral evidence. He is entitled to state that the evidence was vague and evasive. He has in fact specified the particular parts of the evidence which he found vague and evasive, in the determination.
18. We find that there is no material error of law in the Judge's determination. There is purely a disagreement with the Judge's decision.
19. Judge Khan's decision, promulgated on 1 October 2014 must stand.

Signed

Date **16 December 2014**

Designated Judge Murray
Judge of the Upper Tribunal