Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/04695/2018

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre	**Decision & Reasons Promulgated**
On 7 February 2019	**On 25 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE L J MURRAY

Between

K A A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Sheppard, Counsel
For the Respondent: Mr Howells, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Turkey. His claim for asylum and humanitarian protection made on 18 August 2017 was refused by the Respondent on 15 February 2018. He appealed against this decision to the First-tier Tribunal and his appeal was dismissed by First-tier Tribunal Judge O'Callaghan in a decision promulgated on the 5 June 2018. The Appellant sought permission to appeal this decision and permission was granted on renewal of his application to the Upper Tribunal by Upper Tribunal Judge Coker. Upper Tribunal Judge Coker found that it was arguable that in reaching his decision on whether the Appellant had sustained detention

and torture as claimed, the Judge failed to have regard to the relevant country material as to the prevalence of detention and torture at that time. Upper Tribunal Judge Coker remarked in granting permission that this may be insufficient to amount to an error of law or, even if he had been detained and tortured as claimed early on, whether he was still at risk of being persecuted if returned.

The Grounds

2. Ground 1 alleges that the First-tier Tribunal Judge repeatedly relied on findings of plausibility without relating these to any country information. These included findings in respect of the possibility of: the collusion between Turkish authorities and medical staff in disguising ill-treatment (paragraph 58), the capacity of the Turkish authorities to fingerprint and arrest protestors (paragraph 60), the questioning of the Appellant regarding his draft evasion (paragraph 61) and the plausibility of a low level HDP supporter being of interest to the authorities (paragraph 66). It is said that there is no engagement with any of the country material submitted on behalf of the Appellant in respect of these findings. It is asserted that the failing is most material in respect of his finding at paragraph 66 that the Appellant 'had provided no credible reason as to why the authorities would be looking for a low level sympathiser, not a member', when there was abundant evidence before the Judge as to the arbitrary nature of the Turkish machinery of detention and arrests of ordinary Turks and pro-Kurdish supporters as set out in Counsel's skeleton argument.

3. At the hearing Mr Sheppard said he was not relying on grounds 2 and 3 and so I do not summarise them here.

The Hearing

4. The appeal therefore came before the Upper Tribunal in order to determine whether there was an error of law in the decision of Judge O'Callaghan and if so whether to set that decision aside.

5. There was no Rule 24 Response. Mr Howells stated that the Respondent's position was that there was no error of law.

6. Mr Sheppard said that only Ground 1 was pursued. He conceded that there was no background evidence before the Judge relating to the prevalence of conditions in Turkey prior to 2015. In the Judgement there was no reference to the objective bundle and the only place where the conditions were mentioned was at paragraph 67 where there was a reference to **IK (Returnees – Records – IFA) Turkey** [2004] UKAIT 00312 and the Judge noted that there was a worsening human rights situation in Turkey in respect of those suspected of links to the PKK and of the evidence in respect of human rights violations in the wake of the coup. There was a failure to grapple with country evidence. Within the skeleton argument there were references to widespread detention and arrest sometimes of

large numbers of people and that this could be arbitrary in relation to those with links to Kurdish parties and movements. It was more than plausible that the police would have facilities to arrest and detain large numbers of people. With regard to paragraph 61 and the Judge's finding that there was no explanation why he would be kept in a motor vehicle for a lengthy period and this was not plausible, the Appellant would not know why he was kept in a car or why the police would do that and there was evidence of widespread arrests. With regard to paragraph 66 and the Judge's finding that he was a simple supporter of HDP and had the lowest level of involvement and was able to leave with no difficulties, there was abundant evidence as to arbitrary nature of arrest and he would not have known why he was investigated and it may have been that they believed that he had a greater level of involvement. The assessment of whether he had been arrested was flawed in law and the appeal should be remitted.

7. Mr Howells submitted that the background material about the prevalence of detention was from 2017 and did not date back to 1994. The Judge dealt with the claimed detentions systematically going through each one and made findings and at no point did find he that the claim of being mistreated was implausible. It was pleaded in the grounds that the Judge placed undue reliance on implausibility findings. At paragraph 58 the Judge found that it was not reasonably likely that the police would drive him to a sham medical examination. This was in relation to the detention in 1994 and this detention and the one in 1999 were dealt with together because this is when he said he was subjected to torture. He gave other reasons for rejecting his account, namely his failure to assert injuries and pain and that it was not reasonably likely that he would not seek treatment in the circumstances. In paragraph 60 in relation to the finding about corralling a crowd, the Respondent accepted that this was a plausibility finding without any apparent country evidence to support it, but the key point was that he made alternative findings. He found that even at its highest it was an exercise in crowd control and not persecution and in 1996 he was not taken to a police station. There was no material error because the Judge made alternative findings. Paragraph 61 related to the claimed detention in May 2005 and it was open to the Judge to make the finding and even if there was an error he did not leave until 2017 and it was not the detention that prompted him to leave. His case was that notwithstanding his mistreatment he continued to live there until 2017. The final example was at paragraph 66 and related to his involvement with HDP and the grounds claimed that this failing was the most material. It was open to Judge to find that there was no credible reason that the authorities would be looking for him due to the noted significant discrepancy in the evidence as to how often the Appellant's family homes had been visited. That significant discrepancy referred back to paragraph 45 and 47 where the Judge recorded the oral evidence of wife. The finding in paragraph 66 was not based on implausibility alone but on a significant discrepancy. There was no material error in paragraph 66.

Discussion

8. The Appellant no longer relies on Grounds 2 and 3. Permission was granted for the reason that it was considered arguable that the Judge failed to have regard to the country material as to the prevalence of detention and torture at the time of the Appellant's alleged arrests. The Appellant claims to have been detained on seven occasions in respect of which he could remember the dates and many others for shorter times for which he could not remember the dates. The detentions in respect of which he was able to remember the dates and upon which the impugned adverse findings are based took place between 1994 and 2017. The detentions allegedly took place in November 1994, May 1996, September 1999, May 2005, June 2010, June 2013 and April 2017.

9. The background evidence in the Appellant's bundle covered the period from 2015 to 2018. There was no evidence before the Judge relating to the prevalence of detentions prior to this period. The Judge was referred to the objective evidence in the Appellant's bundle at paragraph 13 of the Appellant's skeleton argument which related to recent reports of the government's crackdown on dissent, arbitrary detention, excessive force and torture, impunity, increased prosecutions since the failed coup and the lack of due process. The First-tier Tribunal Judge noted the objective evidence at paragraph 35 of the decision and the relevant country guidance case law at paragraph 55. He then applied the country guidance to his findings of fact at paragraph 67.

10. The ground on which reliance continues to be placed asserts that the Judge placed undue reliance on unsubstantiated plausibility findings. There is substantial case law in this jurisdiction in relation to plausibility findings. Plausibility is an inherent aspect of the assessment of credibility. The inherent likelihood or apparent reasonableness of a claim is an aspect of its credibility and an aspect which may well be related to background material which may assist when judging it. In **KB & AH (credibility-structured approach) Pakistan** [2017] UKUT 00491 (IAC) the Upper Tribunal held that the 'Credibility Indicators' identified in the Home Office Asylum Policy Instruction, Assessing credibility and refugee status Version 3.0, 6 January 2015 (which can be summarised as comprising sufficiency of detail; internal consistency; external consistency; and plausibility), provide a helpful framework within which to conduct a credibility assessment.

11. In **HK v SSHD [2006] EWCA Civ 1037** the Court of Appeal reasoned that, in many asylum cases some, even most of the Appellant's story, might seem inherently unlikely. But that did not mean it was untrue. The ingredients of the story and the story as a whole, had to be considered against the available country evidence and reliable expert evidence, and other similar factors, such as consistency with what the appellant had said before and with other factual evidence.

12. With this guidance in mind, I have considered each of the impugned credibility findings in turn. The first relates to the claimed detention in 1994. The Judge dealt with this claim in paragraph 58 of the decision. In

respect of this the Judge notes that in interview the Appellant was asked very little about the claimed torture on this occasion. Further, his witness statement was sparse on this issue and merely stated that he was subjected to 'severe torture' and no more information was provided. The Appellant's representative was allowed to develop the evidence at the hearing. The Judge found that the evidence provided was not such to establish his claim when assessed against the relevant standard of proof. His reasons are as follows:

> "The 1994 detention is said to have lasted five days and the appellant asserts that he was subjected to significant ill-treatment amounting to torture that included regular beatings, electrocution, being tied at the wrists and help up in the air, being hit in the genitals and being subject to Palestinian hanging. He described the treatment as occurring every day with only 2-3 hour breaks. Yet he asserts that he was driven to a doctor who performed a perfunctory examination so as to prepare a report before his release. The doctor was unable to identify the man before him had been severely tortured for five days. If the doctor was complicit in hiding torture behind a false medical report it is not reasonably likely that the police would have taken the step of driving the appellant some distance to undertake a sham medical examination. A further concern is that after such appalling ill-treatment the appellant was content to have basic medical care at the hands of his uncle and to use painkillers. The evidence that the family wanted to keep public knowledge of the arrest to a minimum is undermined by the fact that the appellant was publicly arrested at a home belonging to a family member."

13. The grounds criticize the Judge for failing to relate the finding in relation to the "collusion between the Turkish authorities and medical staff in disguising ill-treatment" to the country information. However, there was no country information provided to the Judge in relation to actions of the authorities in 1994. Further, it is clear from reading the paragraph as a whole that the Judge is not disputing the possibility of collusion, but rather concluding that it is inherently unlikely that the police would have driven the Appellant some distance in order for a false report to be provided. The Judge was entitled to use his common sense and whilst a decision maker must look through the spectacles provided by the information he has about conditions in the country in question, the Judge found the Appellant had failed to substantiate his claim even to the lower standard. The Judge was entitled to find that this aspect of the Appellant's claim was inherently unlikely and looking at his account in respect of this detention as a whole that he had failed to establish it.

14. Whilst the finding was made in the absence of country evidence the Judge gave a number of sustainable reasons for finding that the account had not been proved to the requisite standard at paragraphs 58 and 59. It was open to him to find that the claimed detention and torture had not occurred due to other reasons quoted above, namely the fact that despite the severity of the alleged treatment he was content to have basic medical care administered by his uncle and the findings at paragraph 59, namely that in 1994 he had claimed to have been subjected to Palestinian

hanging and was hung by his wrists but referred only to a bad back but made no reference to injuries to his arms and shoulders. There is no criticism of the Judge's findings in paragraph 59 in relation the failure of the Appellant to refer to any pain in his shoulders or upper arms given the nature of the alleged torture. I therefore find there is no material error in relation to the impugned finding in paragraph 58.

15. The next impugned finding is at paragraph 60 of the decision. The findings in this paragraph relate to the detention in May 1996. The Judge found the Appellant's evidence in relation to this detention was 'vague and inconsistent'. The finding with which the Appellant takes issue is that:

> "I do not find it plausible to the lower standard that police officers corralling a crowd into a car park during a protest would have with them the facilities to photograph, fingerprint and record the arrests of over 100 people."

16. The Respondent accepts that this is a credibility finding made in the absence of country evidence but argues that the Judge made the finding in the alternative, and the alternative finding is sustainable. The Judge found in the alternative that this was an exercise in crowd control by the police and although it may have been unpleasant it did not amount to persecution. Further, as it took place in 1996, even if a record existed, the Appellant was not taken to a police station and it had not been cited as the basis for any further difficulties. These findings were, I conclude, adequately reasoned, open to the Judge on the facts and have not been the subject of criticism. I therefore find there is no material error in paragraph 60.

17. The grounds also criticize the Judge's findings in paragraph 61 in relation to the questioning of the Appellant regarding his draft evasion. No further particulars are given of why this finding is in error. The Judge noted at paragraph 61 that in his interview the Appellant had detailed an arrest in 2005 when upon an ID check the police noted that he had failed to undertake military service. In interview he had said that the police gave him a letter and released him after a couple of hours. In his witness statement he went further and said he had been questioned for a few hours. The Judge rejected his account because no explanation had been provided as to why police officers who were aware that the Appellant was a draft evader would then keep him in a motor vehicle for a lengthy period to address him on this issue or as to how they were able to address this issue whilst sitting in a car.

18. I find that it was open to the Judge to conclude that the Appellant's account that he had been detained in a police car for a couple of hours to ask him questions in relation to his draft evasion when they already knew about it was not a plausible one. He gave adequate reasons for this finding.

19. The Appellant also asserts that there is a material error in relation to the Judge's finding at paragraph 66 in relation to the plausibility of a low level

HDP supporter being of interest to the authorities. The Judge found at paragraph 66 that notwithstanding the fact that Appellant had made basic errors in relation to his knowledge of the party he had provided sufficient evidence to show that he was sympathetic towards it but that he was simply a supporter. There had been a significant discrepancy in the Appellant and his wife's evidence as to how often the authorities had visited family homes looking for the Appellant. This finding relates back to the evidence summarized at paragraphs 45 and 47. There had also been significant discrepancies as between the evidence of the Appellant and his wife as to the final arrest on 2 April 2017. The Judge gave cogent reasons for rejecting the account of the detention in 2017. Further, the Appellant was also able to leave Istanbul airport on his own passport. In the light of these findings he further found that the Appellant had provided no credible reasons why the authorities would be looking for a low-level sympathizer. The Judge had already rejected the Appellant's accounts of all the claimed detentions and given sustainable findings for rejecting them. He found that he was a person of no prior interest to the authorities.

20. The assessment that the Appellant had provided no credible reason as to why the authorities would be looking for a low-level sympathizer was made on the basis of sustainable findings based on material inconsistencies that he had no prior material history. The Judge clearly took the country evidence into account at paragraph 67 and it was open to him on the basis of that evidence to conclude that a person with the Appellant's profile as he had found it to be would not be of interest to the Turkish authorities. I find that there was no error of law in relation to the findings in paragraph 66.

Decision

The decision of the First-tier Tribunal did not contain a material error of law and I do not set it aside.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date 19 March 2019

Deputy Upper Tribunal Judge L J Murray