



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

Appeal Number: PA/06049/2018

THE IMMIGRATION ACTS

**Heard at Bradford
On 24th June 2019**

**Decision & Reasons Promulgated
On 2nd July 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

**H D
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Saeed of Aman Solicitors Advocates (London) Ltd
For the Respondent: Mr M Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Kelly made following a hearing at Bradford on 24th January 2019.

Background

2. The appellant is a citizen of Turkey born on 1st September 1992.
3. He has a lengthy immigration history. He says that he was detained and beaten by Turkish police in 2009 and his father arranged for him to travel to the UK as a student. He entered the UK with leave to remain until 2010

but was nevertheless still here in May 2013 when he was discovered by Immigration Officers to be working in his cousin's fish and chip shop. At that stage he made an unsuccessful human rights claim under Article 8 of the Human Rights Convention, but no asylum claim. He says that he was hoping that the situation in Turkey would improve. He was removed there in July 2013.

4. In mid 2016 the appellant claims to have been assaulted and his arm broken by six people, he says, on account of his membership of the Alevi faith. In November he was arrested on suspicion of involvement in the Gulan movement. In September 2017 he was arrested when visiting the house of a friend and detained and sexually abused. He then travelled to Ankara where he went into hiding. He was prescribed medication by a doctor and attempted suicide.
5. The appellant did not mention these events during his screening interview on two occasions because he said that he was scared that he would be treated in the same way as happened when he made his unsuccessful human rights claim, and he was tired after his twelve hour trip to the UK so he did not think to mention them.
6. The judge said that he attached significant weight to the various medical reports as evidence supportive of his claim to have suffered physical and emotional trauma. He said that, whatever the cause of that trauma may have been, he accepted that it potentially rendered the appellant vulnerable and so he had factored this into his overall assessment of his credibility. Nevertheless, he concluded that the appellant had not told the truth about his reasons for coming to the UK and dismissed the appeal.

The Grounds of Application

7. The appellant sought permission to appeal on the grounds that the judge had failed to apply Article 1 of the Refugee Convention, had applied the wrong standard of proof, and had made contradictory findings in that he had accepted that the appellant was potentially vulnerable and yet criticised the appellant for not disclosing details of the sexual abuse that he suffered in Turkey.
8. Permission to appeal was granted by Judge Adio on the second two grounds.

Submissions

9. Mr Saeed relied upon his Grounds of Appeal. He drew my attention to the medical evidence set out in the appellant's supplementary bundle which shows a consistent generalised anxiety disorder and low mood. The general report, entitled "Psychology, Trauma and the Law" by Dr Georgina Smith and Dr Sarah Heke demonstrated the effect which trauma has on memory in that people can sometimes remember events they have not in reality experienced and the traumatic memories which they do have are

likely to be fragmented. A common feature of traumatic experience is to dissociate in an attempt to create distance from distress which can disrupt the trauma victim's ability to remember.

10. He submitted that the judge had accepted the medical reports and said that he had taken them into account when reaching his conclusions but it was apparent from the determination that he had not in fact done so. It was a contradiction for the judge to say that he had attached significant weight to the medical reports but in effect, treated the appellant as an individual who was fit and well.
11. Second, he submitted that the judge had not applied the proper standard of proof at paragraph 34 of his determination when he said that he was left in no real doubt that his account of ill-treatment in Turkey was fabricated.

Findings and Conclusions

12. Dealing with the last point first, there is no substance to the claim that this experienced judge applied the wrong standard of proof. In fact he set it out clearly and accurately in his conclusions at paragraph 36 of the determination when he said:

“Whilst I do not exclude the possibility that the appellant is a practising Alevi Muslim I am not satisfied that there is a reasonable degree of likelihood of him either:

 - (a) having previously experienced persecution as such from non-state actors and/or
 - (b) requiring surrogate protection in view of sufficient protection being available from the Turkish state.”
13. At paragraph 27 the judge said that he attached significant weight to the medical reports, and there is no basis upon which to conclude that he did not do so. The judge accepted that there was evidence of trauma which potentially rendered the appellant vulnerable but did not accept that the cause of the trauma was as stated by him.
14. The judge was obliged to take into account a number of aspects of the appellant's behaviour. He failed to return to Turkey when his leave expired in January 2010. He remained in the UK until he was encountered by Immigration Officers in 2013. Even at that stage he did not claim asylum although it his case that he had suffered harm in 2009. There is nothing contradictory between accepting that there was medical evidence of trauma but concluding that the cause of that trauma was not as now described. The appellant's immigration history is plainly relevant to that assessment.
15. It was open to the judge to hold it against the appellant that he did not disclose the arrest and ill-treatment he experienced he says at the hands of Turkish Police in 2016 and 2017 when asked at his screening interview why he could not return to his home country. The judge was entitled to

highlight the discrepant nature of the appellant's explanations for failing to mention the central part of his claim, both that he feared doing so in case it would lead to his removal and that he just did not think about it. Whilst it could be that the contradictions in the appellant's evidence could be ascribed to posttraumatic stress the judge was entitled, bearing in mind all of the other factors in this case, to conclude that the real reason was because the account had been fabricated.

16. The judge properly asked himself why the appellant had decided not to give direct evidence of the events which he said led to his claim for asylum. He acknowledged that it might have been difficult for the appellant do so through a female interpreter. However, an advanced request for a male interpreter would readily have been granted. In any event, he could have given a detailed account of the sexual abuse he claims to have suffered in a witness statement, which could have been adopted at the hearing. The witness statement was in fact wholly silent on the matter.
17. This is a well-structured, well-reasoned determination. There is no error of law.

Notice of Decision

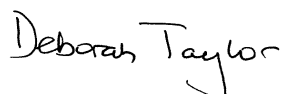
18. The original judge did not err in law and his decision stands. The appellant's appeal is dismissed.

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 their 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 29 June 2019



Deputy Upper Tribunal Judge Taylor