



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

Appeal Number: PA/06794/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 17 October 2019**

**Decision & Reasons Promulgated
On 21 October 2019**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

M C (TURKEY)

(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. B. Ali, Aman Solicitors Advocates (London) Ltd

For the Respondent: Ms A. Fijiwala, Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The Appellant is a national of Turkey. He entered the United Kingdom on 1 September 2014 and applied for asylum on that same day. The basis of his claim was that he had been a

supporter of the BDP (the Peace and Democracy Party) and the HDP (the People's Democratic Party) and had attended marches and distributed leaflets for them. His application was refused on 16 May 2018 and he appealed. His appeal was dismissed by First-tier Tribunal Judge Monson in a decision promulgated on 14 June 2019 and First-tier Tribunal Judge Bristow granted him permission to appeal on 19 July 2019.

ERROR OF LAW HEARING

2. At the start of the hearing, both representatives told me that they had had a chance to discuss the appeal outside court and had agreed that there were errors of law in the decision under challenge and that the appeal should be remitted to the First-tier Tribunal for a *de novo* hearing.

ERROR OF LAW DECISION

3. The Appellant is of Kurdish origin and when in Turkey he was living in Gaziantep. It is his case that on 3 August 2013 he was detained by plain clothes police officer when he was leaving a BDP building and interrogated. He was told that the authorities believed that he and his father supported the PKK. He was detained for two days and subjected to torture. It is also the Appellant's case that he was detained again on 6 August 2014 for two days and accompany a group of village guards, gendarmes and army officers who were looking for members of the PKK who were crossing over into Syria. When he was released, he was told that he would have to sign on every three days. As he was afraid of further ill-treatment, he then fled from Turkey.
4. At paragraph 49 of his decision, First-tier Tribunal Judge Monson found that:

“It is also reasonable to question whether the stark inconsistencies between the screening interview and the asylum interview, and the further stark inconsistencies between the appellant's account of the circumstances leading up to his second detention in the MLR as against what he said in the asylum interview, can be explained away on the basis of the appellant's mental ill-health...I do not consider that PTSD reasonably accounts for his failure to display knowledge of the HDP and BDP consistent with him being a supporter of these parties...”.
5. When doing so he failed to take into account the psychiatric report by Dr. Brady, who examined the Appellant on 27 April 2015 and 27 July 2015. She noted in paragraph 23 of her

report that during his first appointment his distress was such that he was unable to answer even simple questions about his current circumstances or mental health and that it was necessary to bring the session to an end as he had a panic attack. However, he was more relaxed at the second appointment and she was able to reach a diagnosis of post-traumatic stress disorder. She also noted in paragraph 44 of her report that she had considered whether he might be feigning or exaggerating his symptoms but concluded that he made no attempt to overstate or exaggerate his symptoms. She also added “on the contrary, he explained clearly and on multiple occasions how his symptoms have improved since he arrived in the UK”.

6. At paragraph 67 she also noted that:

“[The Appellant] was interviewed when he was held in detention, an environment that plausibly exacerbated his pre-existing symptoms of PTSD. There was little explicit consideration of the impact of his mental health difficulties by the interviewer apparent in the SEF, despite [the Appellant] raising this issue on multiple occasions. Therefore, it is entirely plausible that the interview and evidence he gave in his SEF is compromised and does not reflect a full or accurate picture of [his] history (indeed there have been additional subsequent disclosure when I have interviewed him in a more relaxed setting). As outlined at paragraph 45, [his] high levels of shame also contributed to his inability to disclose the full details of his ill-treatment in Turkey, particularly the sexual abuse he described to me”.

7. At paragraph 61 she also said:

“I note that the questioning may have seemed somewhat adversarial in nature to [the Appellant] (for example paragraphs 234 to 236 [which related to when he started supporting HDP]. The interviewer repeatedly pushes for specific details even when it is clear that [the Appellant] is becoming confused”.

8. In my view, this amounted to a failure to take into account evidence which was clearly relevant to the Judge’s findings of fact in relation to a core element of the Appellant’s case.

9. I have also reminded myself that, in paragraph 24 of *JA (Afghanistan) v Secretary of State for the Home Department* [2014] EWCA Civ 450, Lord Justice Moore-Bick found:

“In the absence of a statutory provision of the kind to be found in section 78 of the Police and Criminal Evidence Act 1984, I do not think that in proceedings of this kind the

tribunal has the power to exclude relevant evidence. It does, however, have an obligation to consider with care how much weight is to be attached to it, having regard to the circumstances in which it came into existence. This is particularly important when considering the significance to be attached to answers given in the course of an interview and recorded only by the person asking the questions on behalf of the Secretary of State. Such evidence may be entirely reliable, but there is obviously room for mistakes and misunderstandings, even when the person being questioned speaks English fluently...”.

10. In the current case, the Appellant was potentially vulnerable by reason of his mental ill-health and his interview took place in Boston Police Station at 22.54 having arrived in the United Kingdom by lorry earlier that day and when he was not legally represented.
11. In relation to the second ground of appeal, First-tier Tribunal Judge Monson stated at paragraph 51 of his decision that “the core claim runs counter to the background evidence since a crack- down on suspected supporters of the PKK did not begin until the re-emergence of the PKK conflict in July 2015”.
12. This was despite the fact that there was evidence before the Judge at page B103 of the Appellant’s Bundle to indicate that 35 people were killed in October 2014 when protesting in support of the HDP. There was also evidence at page B123 of the Appellant’s Bundle that there were 226 attacks against the HDP between 2014 and 2016 and evidence at page B139 of the Appellant’s Bundle that there were several hundred attacks targeting HDP election offices in the run-up to the elections of June and November 2015.
13. This amounted to a failure on the part of the Judge to consider the Appellant’s case in the context of the appropriate country evidence.
14. For these reasons First-tier Tribunal Judge Monson’s decision contained material errors of law.

DECISION

- (1) The Appellant’s appeal is allowed.
- (2) The appeal is remitted to the First-tier Tribunal to be heard *de novo* before a First-tier Tribunal Judge other than First-tier Tribunal Judge Monson or

First-tier Tribunal Judge Bristow as the errors made deprived the Appellant of a fair hearing of his appeal.

Nadine Finch

Signed
Upper Tribunal Judge Finch

Date 17 October 2019