Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08021/2019 (V)

THE IMMIGRATION ACTS

Heard remotely at Field House
On 2nd November 2020

Decision & Reasons Promulgated
On 19th November 2020

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

H G
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms L Crichton, Maguire Solicitors
For the Respondent: Mr T Melvin, Home Office Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in the bundles on the court file, the contents of which I have recorded. The order made is described at the end of these reasons.

DECISION AND REASONS

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1. The Appellant is a citizen of Turkey born in May 1999. He appeals against the decision of First-tier Tribunal Judge Cowx, promulgated on 5 November 2019, dismissing his protection claim on asylum, humanitarian protection and human rights grounds.

2. Permission to appeal was sought on the ground that the judge erred in law because any inconsistency between his appeal statement, his asylum interview and his Preliminary Interview Questionnaire [PIQ] statement was not material. Permission to appeal was granted by First-tier Tribunal Judge Beach on 9 January 2020 on the following grounds:

> "The adverse findings of the First-tier Tribunal Judge rely primarily on discrepancies between the Appellant's Initial Contact and Asylum Registration Questionnaire [ICARQ]. The First-tier Tribunal Judge does not appear to have considered whether the evidence post the [ICARQ] was consistent and the effect of that on his assessment of the answers given at the [ICARQ]. It is arguable that the First-tier Tribunal Judge has not considered the principles set out in YL (Rely on SEF) China [2004] UKIAT 00145 when considering discrepancies between an initial account and later accounts".

3. The appeal was listed for hearing on 16 April 2020 but was vacated due to the outbreak of COVID-19. On 23 April 2020, directions were issued by the Tribunal stating that it was the Tribunal's provisional view the error of law hearing could be determined without a hearing. In response, the Appellant filed further submissions on 5 May 2020.

4. In the Rule 24 response dated 7 May 2020, the Respondent stated that the judge set out the reasons for finding the Appellant lacked credibility at [7] of the decision. This included a finding at [7.3] that the Appellant's accounts differ between the ICARQ which took place on 27 April 2019 and his PIQ statement on 12 June 2019. The ICARQ was not taken after a long journey as it was the Appellant's own evidence that he had been in the UK two weeks before making an asylum claim. The Appellant was cross-examined on the discrepancies at the hearing and the judge formed a view on the answers given. It was further submitted that the SEF [statement of evidence form] had changed considerably, now becoming the ICARQ, since YL was promulgated in 2004. The Respondent relied on paragraphs 23 to 25 of YL. It was submitted the decision of the First-tier Tribunal was not wholly reliant on the contents of the ICARQ and that within [7] the judge had set down further areas of concern which had led to the adverse credibility findings.

5. Upper Tribunal Judge Sheridan considered the Appellant's further submissions and concluded that they raised two further arguments which were not included in the grounds of appeal. Firstly, the judge had erred by failing to consider the evidence of Dr Christie, as to the Appellant's condition and the impact of PTSD on his ability to recall the details of the trauma he had suffered. Secondly, the judge failed to give reasons to support his finding that the Appellant's account was implausible. Judge Sheridan granted the Appellant permission to amend the grounds to include these two new arguments and to make further submissions.

6. The Respondent made submissions on 17 June 2020 relying on the Rule 24 response dated 7 May 2020. It was submitted the evidence from the psychologist, Dr Christie, was solely based on what she was told by the Appellant and as such, the judge was entitled to afford it little weight. It was further submitted that it was unclear from the papers if the Appellant was referred to Dr Christie by his GP or his representatives. This was relevant because the Appellant did not appear to be taking any medication or receiving treatment for any mental health issues. Given the diagnosis of PTSD was based entirely on what the Appellant told the psychologist, it did not follow that the diagnosed PTSD was able to affect the account given by the Appellant on arrival in the UK. The judge assessed all of the evidence in the round and the challenges made against the decision were insufficient to dislodge the judge's sustainable findings.

7. The Appellant made submissions dated 22 June 2020 stating that there were material errors of law because any inconsistency between the Appellant's appeal statement, the asylum interview and PIQ statements was not material. The appellate process gave the Appellant several opportunities to set out his account. It was inevitable that errors would slip in that may seem material but, as in this case, were not. The error in relation to the year when the Appellant was first arrested was one digit, 8 instead of 7. It was submitted that every material particular was the same as between the accounts. The accounts were not markedly different. The threat referred to at [6.2] was no different to a threat to kill. The judge had failed to consider the evidence in the round applying the lower standard of proof and in effect insisted that the Appellant gave two entirely different accounts.

8. In addition, it was submitted that the judge's treatment of the psychological report amounted to an error of law. The judge failed to consider the impact that PTSD would have on the Appellant's ability to recall the details of a trauma memory on arrival in the UK. The judge had failed to apply YL and, had he done so, he would have come to a different conclusion. Further, the judge's finding that the Appellant's account was implausible was lacking reasons. The judge stated: "I also find HG's account of this incident to be implausible. If the Turkish authorities wished to cultivate HG as an informant, they would surely have attempted more subtle means than those described by HG".

9. There was evidence in the expert report of Dr Kaveh Ghobadi that supporters and members of pro-Kurdish have experienced arbitrary arrest, unlawful detention, mistreatment and torture by the Turkish authorities. Following the failed coup and under emergency rule, there was an intensified 'crackdown' on members and supporters of HDP. The judge had failed to take into account the country information in finding that the Appellant's account was not credible and failed to give adequate reasons for those conclusions.

Submissions

10. Ms Crichton relied on her written submissions of 22 June 2020 and responded to the Rule 24 response. She submitted the Appellant was given an initial opportunity to explain his claim and was asked to give very brief reasons. The judge had not

assessed the evidence in the round. It should be clear from the decision the reasons for dismissing the appeal and the judge had failed to give reasons in accounting for his negative credibility findings. The judge was applying a higher standard of proof than was applicable. Ms Crichton accepted that an adverse credibility finding could be made in relation to the discrepancies, but the judge relied on minor discrepancies to dismiss the appeal. The Appellant was suffering from PTSD which affected his ability to recall accurately his claim when initially interviewed.

11. Mr Melvin relied on the Rule 24 response and his written submissions dated 17 June 2020. He submitted the judge had considered the evidence in the round and heard lengthy cross-examination on the discrepancies. There was a four-month period between initial screening and the full asylum interview. The main thrust of the refusal notice was the Appellant's lack of knowledge of HDP of which he claimed to be a supporter. When taken at its highest, the Appellant was a low level supporter and according to the background evidence he would not be at risk on return. The discrepancies referred to at [7] were not minor but quite serious. The Appellant had the interviews read back to him and made no mention of any mistakes. There was no complaint raised by his representative.

12. The judge considered the Appellant had seriously embellished his claim. Applying YL an asylum seeker could be expected to tell the truth and it would be expected that he would give the correct year for his arrest and recall any threats to kill which he claimed occurred after he was clearing up from the Newroz celebrations. The Appellant's account differed greatly in this case and the judge's decision was sustainable. The psychological evidence described symptoms of PTSD, not a finding that the Appellant was suffering from PTSD. The judge's finding on the psychological report was open to him on the evidence before him and he conducted a holistic assessment. In any event, taken at its highest, the Appellant was a low level supporter and not at risk on return. Both parties agreed that if I found there was an error of law, the matter should be remitted to the First-tier Tribunal.

Conclusion and Reasons

13. The judge set out the Appellant's account in the ICARQ, the PQI and PIQ statement at [6.1] and [6.2].

> "6.1 HG claims to have been involved with the HDP since at least Mar 17 when he helped with the cleaning of a Newroz celebration site. It was after these celebrations that he claims to have been detained by police on 21 Mar 17. He alleges that he was psychologically and physically tortured that night, being questioned about the HDP and possible connections to the PKK. He lost consciousness and the next morning he was beaten by a police officer before being released. It is relevant to compare this full account in his witness statement dated 17 Sept 19 with his first account given to the respondent in his [ICARQ] dated 27 Apr 19. In his questionnaire at pages 6 and 7 he was asked why he could not return to his home country. In response he referred to his arrest on 21 Mar 2018 (not 2017), being asked to act as an informer, being warned about his behaviour, then released. At the

earliest opportunity to explain his fears, he failed to mention any form of physical or mental abuse by the Turkish authorities.

6.2 In his witness statement HG mentions the alleged incident which prompted him to flee from Turkey. He claims on 22 Mar 19, the day after the Newroz celebrations in Elbistan, he was at his grandmother's house when soldiers kicked down the door and entered the house. He was questioned by a 'commander' who asked him to work for the authorities as an informant against the HDP and the PKK. If he failed to do so they would shoot him and his grandmother in the head next time they came to the village. In his [ICARQ], he mentioned being followed by the authorities, who came to his grandmother's home, asked him to be an informant and threatened to detain him if he did not. In this his first opportunity to explain his fears he made no mention of threats to kill him or his grandmother, which I find to be a significant omission at a point when he was free to provide an honest and accurate account".

14. The judge made the following relevant findings at [7]:

"7. I conclude that the Appellant has not proved, to the applicable lower standard of proof, that he is entitled to international protection and I dismiss the appeal. The reasons for my conclusions are:

HG's account of persecution by the Turkish Authorities

7.1 I found HG's account of being physically and psychologically abused by the Turkish police in Mar 17 and of being threatened with death by members of the military or gendarmerie in Mar 19 to be both implausible and inconsistent.

7.2 In his first account to the Home Office in an [ICARQ] dated 27 Apr 19 he was asked why he could not return to Turkey. He mentioned his arrest on 21 Mar 17 and his release but made no mention at all of the physical and mental abuse he later claimed in his witness statements. If he had been beaten and mentally tortured as later described, one would have expected him to make reference to it at the first opportunity.

7.3 I noted a further inconsistency regarding the date of the first occasion on which he found himself in police custody. In the [ICARQ] at page 6 of 12 HG said it was on 21 Mar 18, but later gave the date as 21 Mar 17 at paragraph 29 of his witness statement and again in his PIQ statement. I am not satisfied that such an error was a genuine mistake. One might mistakenly recall the year of an event which happened many years before, but I am not satisfied that one would make such a mistake when the event was only the year before or two years before.

7.4 Similarly, in the [ICARQ] he made no mention at all of threats to kill him or his grandmother. Instead he said his fear was of being detained. The later addition of alleged threats to kill has a distinct air of embellishment. I also find HG's account of this incident to be implausible. If the Turkish authorities genuinely wished to cultivate HG as an informant, they would surely have attempted more subtle means than those described by HG, which again were not mentioned in his first account to the Home Office.

7.5 It was apparent from HG's testimony that he was nothing more than a low-level supporter of the HDP, who only came to the notice of the authorities on two occasions, if one accepts his account as true, which I do not. I am not satisfied that HG did come to the attention of the authorities and I am likewise not persuaded by his belated account of ill-treatment.

7.6 HG claims to suffer from PTSD and in support produces a psychological assessment by Dr Zara Christie. Dr Christie opines that HG appears to be experiencing symptoms of PTSD based on the description of traumatic events and experiencing flashbacks, nightmares and fear. I do not find that Dr Christie's report is in any way determinative of the primary factual issue in this case, which is whether or not HG was subjected to violence, threats of violence and psychological abuse which then caused him to fear persecution if returned to Turkey. Dr Christie's opinion on PTSD is founded entirely on HG's account of events and based on an assumption that his account of traumatic episodes is true. Any such diagnosis is of limited value in a case such as this as is founded entirely on an assumption that an Appellant has given a truthful account to the expert. One has to first assess the veracity of the Appellant's account. In this case I am not persuaded the account provided to Dr Christie represents the truth. The account given by HG to the Tribunal is essentially the same as that given to Dr Christie, therefore I find Dr Christie's report in no way corroborative of HG's claim and I give no weigh to it.

The Appellant's Immigration History

7.7 HG left Turkey and first went to France. On his own account he arrived in France on 30 Mar 19. His attempt to enter the UK on 6 Apr was foiled but he succeeded in making it to London on 17 Apr 19. From London he went to Edinburgh on 18 Apr 19 and it was not until 27 Apr 19 that he claimed asylum. When cross-examined he said he did not claim asylum in France because he did not know anyone in France who could support him. When asked to account for the delay in claiming asylum in the UK he put it down to the Home Office being closed over a bank holiday weekend. The respondent suggests the failure to seek asylum first in France and the delay in seeking asylum in the UK damages HG's credibility and further submit that Section 8 of the Asylum and Immigration (Treatment of Claimants) Act 2004 should be given effect. I accept the respondent's position with regard to HG's asylum history. I find his failure to seek asylum at the first opportunity in France does further undermine his credibility as does the delay of some ten days in making his asylum claim once in the UK".

15. It is apparent when reading the totality of the judge's decision that the judge does not rely on minor discrepancies of incorrect dates or a description of threats to kill. The judge clearly finds that, at the earliest opportunity, the Appellant failed to mention any ill-treatment or any threats to his life by the Turkish authorities. These are not minor discrepancies; these are significant discrepancies. The judge in effect found that the Appellant had seriously embellished the account in his witness statement and evidence before the Tribunal to that which he put forward in his ICARQ.

16. At the earliest opportunity, the Appellant failed to mention being beaten and psychologically tortured when arrested in March 2017 and he also failed to mention

any threat to his life or his grandmother's life when the authorities came to his grandmother's house after the Newroz celebration on 22 March 2019. These findings were open to the judge on the evidence before him and he gave adequate reasons for coming to this conclusion. The judge applied the correct standard of proof in finding that the Appellant's account given in his witness statement and at the hearing was significantly different to that disclosed in his ICARQ. This finding was consistent with the principles in YL.

17. The judge also gave other reasons, in addition to the discrepancies, for finding that the Appellant's account was not credible. He gave adequate reasons for why he attached little weight to the report of Dr Christie. The psychological report referenced symptoms of PTSD and how the Appellant could reduce the intensity of his distress. Dr Christie made no assessment of whether the Appellant's symptoms were consistent with his account of ill-treatment. There was nothing in that report to suggest that the Appellant would have difficulty recalling details in his ICARQ.

18. The judge also relied on the Appellant's failure to claim asylum in France and at the first opportunity when he arrived in the UK. These findings supported the judge's adverse credibility finding and I am not persuaded that the grounds of appeal or the submissions made on the Appellant's behalf demonstrate that there is an error of law in the decision. Any lack of reasoning in relation to the judge's findings at paragraph 7.4, that the Appellant's account of the authorities visiting his grandmother's house was implausible, was not material.

19. It is apparent from [6] that the judge considered the country expert report. In particular the judge stated:

> "I have given regard to the expert report of Dr Kaveh Ghobadi who describes historic persecution of the Kurdish people by the Turkish state, recent repressive measures against the HDP and its members and supporters and discrimination against the Alevi religion, which falls short of persecution. The report provides a background to this claim which I determine on its own facts."

20. I find the judge took into account the background information in assessing the plausibility of the Appellant's account and any lack of reasons in the judge's conclusion in that respect was not material.

21. In any event, the judge considered the Appellant's claim at its highest and concluded that he was a low level supporter. The Appellant would not be at risk on return. There was no challenge to this finding. Any error of law in relation to the assessment of credibility was not material to the decision to dismiss the appeal.

22. Accordingly, I find there was no error of law in the decision promulgated on 5 November 2019 and I dismiss the Appellant's appeal.

Notice of decision

Appeal 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 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.

J Frances

Signed Date: 16 November 2020
Upper Tribunal Judge Frances

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

J Frances

Signed Date: 16 November 2020
Upper Tribunal Judge Frances

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent.

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email