Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/04076/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 31 October 2017	**On 09 November 2017**

Before

UPPER TRIBUNAL JUDGE WARR

Between

ZS
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr P Bonavero of Counsel, instructed by Migrant Law Partnership
For the Respondent: Mr C Bates, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Turkey born on [ ] 1996. He appeals the decision of the Secretary of State on 2 April 2016 to refuse his asylum application. Having unsuccessfully applied for a visit visa the appellant arrived in the UK on 2 October 2015 in the back of a lorry. He applied for asylum on 29 October 2015. The application was refused on 6 April 2016 and the appellant appealed that decision. The appeal came before a First-tier Judge on 4 April 2017. His claim was summarised by the First-tier Judge in the following extract from her determination:

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> "2. The basis of the appellant's claim for asylum is contained in his Statement of Evidence Form, asylum interview and witness statement. The appellant is a Kurd from Turkey. He claimed that he was arrested and detained three times by the Turkish authorities. On the first occasion he was detained on 8 June 2014 after he attended a demonstration in support of Kurdish rights. He claimed that he shouted some slogans and some PKK supporters blocked the roads. He was hit with the butt of a rifle and arrested. He claimed that he was detained for three days, ill-treated and accused of being a PKK supporter which he denied. He was released without charge. On the second occasion he was arrested on 20 October 2014 from his home. He and his brother were detained. The authorities searched the house and found two invoices for donations which he had made to the People's Democracy Party (HDP). The appellant claimed that he was again accused of supporting the PKK. He was detained for three days and accused of being involved in an arson attack on a school and the AKP Party building. He was again released without charge.
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> 3. The appellant claimed that the last detention took place on 13 August 2015. He was one of ten people who went to an HDP Party building in Varto. The appellant claimed that there was a crowd in front of the building and one person was giving a speech. He shouted some antigovernment slogans; the crowd wanted to march but the security forces threw teargas. The appellant claimed that he was detained for three days, ill-treated in detention and asked the same type of questions that he was asked before. He was threatened that he would be killed or put in prison if he did not become an informant for the Turkish authorities. The appellant claimed that the following day he agreed to be an informant and was released on 16 August 2015. He was given a telephone number and told to provide information about the PKK and HDP to the authorities. He was also asked to report to the police every Monday. The appellant claimed that he feared that his life was in danger and left Varto on 19 August 2015 and went to Istanbul. He stayed in Istanbul for seven to ten days and then left Turkey about one or two weeks later after the police went to his house looking for him. The appellant stated in interview that he is a supporter of HDP because they support Kurdish people's rights."

2. The Secretary of State did not accept that the Turkish authorities were interested in the appellant as he had been released from detention without charge nor that he had been forced to become an informer. If the appellant were of high interest to the authorities they would have looked for him sooner. While the appellant had basic knowledge of the HDP, he could have gleaned this as he was a Kurd from Turkey. The appellant's claims on asylum, humanitarian protection and Article 8 grounds were rejected.

3. The First-tier Judge heard oral evidence from the appellant and also from his cousin ES, who has the same surname as the appellant. He had been granted asylum in 2013 after an appeal and had been in the United Kingdom since November 2000. He had returned to Turkey on four occasions since 2011 and had had no problems with the authorities during

his visits as he now held a British passport. He had been told by members of his family that the appellant was wanted by the authorities in Turkey. He said the appellant's brother had been interviewed by the Home Office in respect of his claim for asylum.

4. The judge records that the appellant claimed that his father and older brother supported the PKK and that the PKK were active in his area and that a number of villagers had joined them. She refers to a discrepancy in the record of asylum interview. The appellant had said that his first detention occurred on 8 June 2014 and had later stated that the next political event that he had attended was on 7 October 2014. However, he had subsequently stated in the interview that he had attended a protest on 21 August 2014. The discrepancy in the view of the First-tier Judge cast doubt upon the appellant's overall credibility.

5. Issue is taken in this case with the judge's negative credibility assessment and Counsel focused chiefly on what the judge stated in the following paragraph of her determination, paragraph 16, which reads as follows:

> "16. At question 47 of the asylum interview of the appellant stated that his second arrest occurred on 20 October 2014. At question 56 he stated that on each detention he was ill-treated; he referred to beatings, torture, electric shocks and falaka. However I find that there is no medical evidence to support the appellant's assertions that he was physically ill-treated in detention. There is no evidence that the appellant suffered any injuries. Yet if he was ill treated in the way he claims, he would have suffered injuries consistent with that ill treatment. I find that the appellant never referred to suffering injuries during his detention. I further find that the appellant gave no detailed evidence of the alleged torture that he suffered. For example he made no mention of where on his body he was hit, whether he asked to see a doctor and whether he has any lasting injuries or scars as a result of the ill treatment. I find that there is no credible or corroborative evidence that he was ill-treated as he claims in detention."

6. A point is taken in the grounds in relation to a finding by the judge that it would not be credible that the appellant would leave HDP donation invoices at his home in the full knowledge that if his home was searched by the authorities the documents could be found. The judge accepted that the appellant came from a Kurdish village where there was considerable support for the HDP and the PKK. She noted that reliance was placed upon the determinations in respect of the appellant's two cousins who had applied for asylum in the United Kingdom. The appellant's cousin HS did not give evidence at the appeal hearing although his determination was in the appellant's bundle. She found that the circumstances in the case of HS, who came from the same village as the appellant, differed from the appellant's asylum claim. HS supported the PKK, his father was tortured in 1994 and his grandmother was shot and killed. He was detained on three occasions for three days.

7. In paragraph 20 of her determination the judge found that the appellant had never been charged or convicted of any offence in Turkey and there was no evidence he was wanted and there was no credible evidence that he had been ill-treated in detention. The appellant had had an opportunity to talk to his cousins about his and their claims for asylum. HS had also stated that he was arrested on three occasions. It was submitted on behalf of the appellant that any similarity between the case of the appellant and his cousins were explicable because they came from the same part of Turkey where there was PKK support and the family was politically active. The judge found that each case should be decided on its own facts. She took into account the fact that two of the appellant's cousins had been granted refugee status and that they came from the same village.

8. Counsel argued that there had been no challenge to the appellant's claim that he had been arrested and detained on three occasions but the judge found that there had been no explicit acceptance of that aspect of his case. The Presenting Officer confirmed that the respondent had not accepted that the appellant had ever been detained or arrested in Turkey.

9. The witness ES confirmed that he had had no problems with the Turkish authorities because he held a British passport. The judge nevertheless found that he had never been questioned by the authorities despite having the same surname as the appellant and attached limited weight to what he said he had been told by members of the family about the interest of the authorities in the appellant.

10. The judge found that the appellant had not been arrested or detained and even if he had attended some protest rallies in Turkey relating to Kurdish rights he had not come to the adverse attention of the authorities. Any political activism in London had been orchestrated to support a weak asylum claim. Having considered the country guidance the judge did not find that the appellant would be at risk on return even if his surname was known to the authorities and his cousin had frequently returned to Turkey. Accordingly the judge dismissed the appeal on all grounds.

11. Grounds of appeal were settled and I have already referred to the principal complaint relating to paragraph 16 of the judge's determination. Permission to appeal was granted on all grounds by the First-tier Tribunal. A response was filed by the respondent on 15 September 2017 in which it was contended that the judge had "robustly" considered the appellant's claim and had made findings with respect to the core aspects of it. She had given adequate reasons by way of reference to the evidence. She was not obliged to find the appellant's claim credible despite the determinations of the appellant's cousins. It was open to the judge to find that the cousins and the appellant had discussed their claims. When read as a whole the judge's findings were open to her.

12. Mr Bonavero concentrated his argument on what had been said in paragraph 16. The judge's finding that the appellant had never referred to suffering injuries during his detention was difficult to reconcile with paragraph 6 of the witness statement where the appellant had referred to being beaten up, kicked and punched and hit with truncheons and subjected to falaka and verbal abuse. He refers to bruises and marks on his body at that time but they faded away. He had gone to get some painkillers on his way home and had taken about a week to recover having been pain. Moreover Counsel pointed to the answer given by the appellant in question 44 of the interview where he had said that he had been in a lot of pain after being beaten up during the detention and had had some bruises and had gone to the chemist's where he had bought medicine and painkillers. In relation to the point made by the judge Counsel submitted that the appellant had been asked in question 39 of his interview what had happened in detention and he had said he had been beaten up and tortured and ill-treated and had been released due to a lack of evidence and he had not been asked supplementary questions about where he had been hit. The judge had taken a point that at the screening interview the appellant had stated he had refused to become an informer but Counsel argued that the appellant had been asked to be brief in explaining why he was claiming asylum and his recorded reply was "because authorities are looking for me because during my last detention they asked me to become their informer but I refused to do that". In relation to scars the judge was not a medical expert and it was not clear that the ill-treatment of which the appellant complained would leave lasting marks. The judge had erred in looking for corroboration. The point taken on the HDP donation invoices was not a good one, it being a legal party. In relation to the appeals lodged in respect of the appellant's cousins there had been a very important overlap and parts of HS' case married with the case put by the appellant. The judge appeared to take a point that there might have been collusion but this ignored the fact that the appellant's claim had been made first.

13. Mr Bates accepted that the findings in paragraph 16 were not necessarily clear. It was a medical issue. There was the informer point in paragraph 17 of the determination and the HDP donations. HS had not given evidence at the hearing. The judge had correctly reminded herself that each case depended on its own merits. While it was claimed that the family name was a red flag ES had returned on four occasions without problems. It was open to the judge to find collusion – the parties could have discussed matters prior to the appellant's arrival. In relation to the point taken about the claimed concession in the decision letter Mr Bates pointed out that at paragraphs 23 and 24 it had been made quite clear that the only matter accepted was that the appellant was a national of Turkey and that it was expressly not accepted that the appellant was wanted by the authorities in Turkey. Nothing else had been accepted. The judge had not accepted the appellant's sur place activities as genuine.

14. In reply Counsel submitted that the key point was the issue of ill-treatment. The appellant had not been inconsistent at his interview. The answer to question 56 of the substantive interview only differed because he had given more detail. The HDP donation receipts at his home were unsurprising given that the party was a legal party. It was further unsurprising that ES had returned to Turkey without problems as a British passport holder whereas the appellant would be returned as a failed asylum claimant. There were still the issues about the extent of any concession made by the respondent in the decision letter. Counsel submitted that the appeal should be remitted for a fresh hearing before the First-tier Tribunal. At the conclusion of the submissions I reserved my decision.

15. I have carefully considered all the material before me and the representations that have been made.

16. In my view Counsel correctly focused on the point taken in relation to paragraph 16. Even Mr Bates, who put up a valiant effort on behalf of the respondent in relation to the other arguments advanced, found the judge's reasoning in this paragraph unclear. As I have said, it is extremely difficult to reconcile what is said with the appellant's witness statement. First of all the appellant had given details of his ill-treatment and had also explained the transient nature of the injuries and the steps he had taken to obtain painkillers and it had taken him a week to recover. What he said in his witness statement was not radically inconsistent with what had been said at interview.

17. Points are taken in relation to the other issues raised by the judge but I think, as is rightly recognised, it is what the judge said in this particular paragraph – paragraph 16 – that raises concerns. I agree with Counsel that the assessment of the appellant's ill-treatment in detention was a key issue in the case and the judge erred in her consideration of it. In the circumstances I accept the argument that the determination is materially flawed as claimed in the grounds and I accede to Counsel's suggestion that the appeal must be remitted for a fresh hearing before a different First-tier Judge.

Notice of Decision

Appeal allowed to the extent indicated.

Anonymity Order

I deem it appropriate in this case to make an anonymity order.

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.

TO THE RESPONDENT
FEE AWARD

The First-tier Judge made no fee award and I make none.

Signed Date 7 November 2017

G Warr, Judge of the Upper Tribunal