



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: AA/04622/2012

THE IMMIGRATION ACTS

**Heard at Field House
On 6 November 2014**

**Determination
Promulgated
On 20 November 2014**

Before

UPPER TRIBUNAL JUDGE MOULDEN

Between

**MR ISMAIL ALTEPE
(No Anonymity Direction Made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Sirikanda a solicitor from Duncan Lewis & Co
For the Respondent: Mr I Jarvis a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Turkey and a Kurd. He was born on 17 December 1984. He has appealed against the respondent's decision of 8 May 2012 to give directions for his removal to Turkey following the refusal of asylum.
2. The appellant claimed to fear persecution from the authorities in Turkey. He said that he was Kurdish and Alevi born and brought up in Dersin Providence. His mother tongue was Kurdish Zazaki (or Zaza).

The area was predominantly Kurdish where people had suffered persecution from the Turkish authorities over many decades. The PKK were active and there was pressure on people to support or join them. The appellant said that his family had always supported pro-Kurdish legal political parties. They were accused of being separatists and relatives were arrested detained and tortured.

3. The appellant said that he became actively involved with the youth wing of HADEP and then DEHAP. In the November 2002 general elections he acted as an observer. He carried out his compulsory military service between May 2004 and September 2005 during which he was ill-treated because of his ethnicity.
4. The appellant claimed that in November 2005 he was part of a group which set off to attend a protest demonstration in Dersin. They were stopped by the police and beaten up. He received a heavy blow to his face which broke his chin. He was taken to the security headquarters fingerprinted and detained. He was beaten up, tortured and accused of involvement with the PKK. After two days he was released, he thought because of lack of evidence. He then moved to Istanbul where he worked in his uncle's restaurant as a chef.
5. The appellant said that his second period of detention was during the 2007 general elections. He played an active role for the DTP and carried out canvassing. He acted as an observer at a polling station and was attacked by "fascists" who punched, kicked and stabbed him in the hip. The police arrested him and took him to security headquarters where he was held for two days, abused, beaten and tortured. He was then released.
6. After this the appellant left Turkey and worked on a ship between August 2007 and November 2009. Returning to Istanbul in December 2009 he resumed his politically related activities, this time for the BDP and campaigned for them. In January 2012 his home was raided and he was arrested, detained and taken to security headquarters. He was beaten, asked about his previous detention and why he had been away from home for a long time. He was accused of involvement with the PKK and the KCK. They threatened to kill him. He was tortured and asked to identify people from photographs. He was told that if he did not cooperate he would be killed. He was knocked unconscious. After further torture the appellant said that he had no strength to resist any longer and he agreed to gather information and act as an informer. He was released on 16 January 2012 on condition that he returned in a month.
7. The appellant said that he went into hiding, staying with a distant relative in another part of Istanbul. Soon after he discovered that the police had been to his house looking for him. An agent was found and paid to take the appellant out of Turkey.
8. The appellant arrived in the UK on 21 March 2012, made an appointment with the Home Office on 23 March 2012 and claimed

asylum on 30 April 2012. He said that after he left Turkey, in about January or February 2014, the authorities raided both his family home and his brother's home in Istanbul. They said that he had been seen taking part in recent riots. There was a further raid on his brother's home in Istanbul in November 2013 when the police threatened the appellant's brother that if the appellant did not surrender himself they would come back for him.

9. After he claimed asylum the appellant had two interviews. Following the respondent's refusal the appellant appealed and his appeal was heard by First-Tier Tribunal Judge Fox ("the FTTJ") on 12 June 2012. Both parties were represented and the appellant gave evidence. The FTTJ dismissed the appeal on Refugee Convention, humanitarian protection and human rights grounds. The appellant applied for and was granted permission to appeal, arguing that he should have been granted an adjournment to enable him to obtain a medical report from the Medical Foundation. Deputy Upper Tribunal Judge Juss heard the appeal against the determination of the FTTJ on 26 October 2012. He concluded that there was no error of law and upheld the decision of the FTTJ.
10. The appellant applied to the Upper Tribunal but was refused permission to appeal to the Court of Appeal. He renewed the application to the Court of Appeal which was refused on the papers. The appellant then made an oral application to the Court of Appeal and permission to appeal was granted. Subsequently, the parties agreed a Statement of Reasons and, on 27 January 2014, the appeal was allowed to the extent that it was remitted to the Upper Tribunal.
11. Following a hearing on 26 February 2014 and in his decision promulgated on 27 March 2014 Upper Tribunal Judge Perkins found that the FTTJ should have granted an adjournment. He concluded that that determination was flawed because of an error of law and directed that the appeal should be reheard with no findings of credibility or fact preserved.
12. The appeal was allocated to me but had to be adjourned on two occasions because of the lack of an interpreter speaking the preferred and required language. That language was said to be Zaza but it has subsequently emerged that the language is called Zazaki and those who speak it are Zaza. It is, I am told, a Kurdish dialect spoken by Kurds in parts of Turkey.
13. At the hearing before me 6 November 2014 a Zazaki speaking interpreter was provided. In reply to my questions she told me that Zazaki was her mother tongue but she also spoke fluent Turkish. At the beginning of the hearing the interpreter spoke to the appellant in Zazaki and he said that he would use a mixture of Zazaki and Turkish, which was what he most comfortable with. Each of them confirmed that they could understand the other in this way. At the end of his evidence I asked the appellant who said that he had understood the

interpreter and had encountered no difficulties. He said that he had mostly used Zazaki.

14. Later in the afternoon of the hearing, after the appellant and his solicitor had left and whilst I was hearing another appeal with Mr Jarvis as the Presenting Officer I was handed a note from the interpreter. This read; "Dear Sir. I writing regarding Ismail Altepe AA/04622/2012 - started at 10.10 am. This morning. When I began to speak with the client he said four sentences in Zazaki and asked me which city I come from. He is from Tunceli city and I am from Mus city, then he said we can mix the languages. I just wanted to clarify that all the questions in conversation took place after was in Turkish language. When you asked the client, which language he used, he said, "Zazaki" and I interpreted as what he said. As I didn't know, legally, what my position was, whether to interpret as it is or correct him! I asked about this to the Clerk she recommended to write a note to you. I am waiting outside as I don't know whether you need further explanation. I just wanted to let you know as I am not sure whether this is relevant or not and I thought this is right thing to do." After receiving this I spoke with the interpreter in the hearing room and in the presence of Mr Jarvis and thanked her for her note. She told me that as far as she was concerned she and the appellant understood each other perfectly. I gave a copy of her note to Mr Jarvis and indicated that I would send another to the appellant's representatives.
15. I have the appellants bundle submitted with the solicitors' letter of 8 April 2014, a supplementary bundle handed in today and Ms Sirikanda's skeleton argument. Mr Jarvis relied on the respondent's skeleton argument dated 28 July 2014 with paragraph 27 to 30 deleted.
16. Mr Jarvis made an important concession; that if I accepted the appellant's account of events in its entirety then he would be at risk on return to Turkey and would have a well-founded fear of persecution for a Convention reason.
17. The appellant gave evidence, and was cross examined and re-examined at length. His evidence is set out in my record of proceedings. At the beginning of the hearing the appellant was accompanied by an interpreter arranged by his solicitors who, I was told, spoke Turkish but not Zazaki. He departed before the appellant gave his evidence.
18. During the course of his cross examination the appellant said that he had received a letter from his brother in Turkey telling him about a raid on the brother's home because the authorities were looking for him. Asked where the letter was and whether he could produce it he said that he had given it to his solicitors. At this point Ms Sirikanda produced a copy of a letter from the appellant's brother with a translation and what appeared to be a copy of a DHL delivery manifest. She accepted that these had not been served on the

respondent or the Tribunal. Mr Jarvis objected to the production of these documents at this late stage. I adjourned for a short while to enable Ms Sirikanda to take instructions from the solicitor responsible for the conduct of the case. On her return she informed me that the translation had been commissioned by her firm some time before 21 June 2014. The documents had not been disclosed because counsel had advised that they were likely to be regarded as self-serving and would not advance the appellant's case. However, these three documents were disclosed now because it was thought that failing to do so after they had been referred to by the appellant would cause greater harm. I allowed the documents to be admitted in evidence. Subsequently, the appellant said that he had received about six letters from his brother and had given two of them to his solicitors. I note that only one letter from the brother has been produced. There was no application to put any other letter in evidence.

19. Mr Jarvis relied on the refusal letter dated 8 May 2012 and the skeleton argument. He submitted that the appeal turned on the credibility of the appellant. He had not put to the appellant all the points raised in the refusal letter but asked me to consider these in the round together with the explanations which the appellant had provided in his witness statements and oral evidence. None of these explanations were accepted.
20. In relation to the medical evidence and at the hearing before Deputy Upper Tribunal Judge Juss those representing the appellant had submitted that his recollection of facts was impaired by the blows he had received to his head. The medical evidence from the Medical Foundation touched on this at paragraph 88 but did not support the submission. The evidence did not show that the appellant's memory was impaired in any way. Furthermore, the opinion that his scars were consistent or highly consistent with the manner in which they were claimed to have been inflicted was not at the top of the Istanbul Protocol scale. Whilst the medical evidence tended to confirm that he had suffered these injuries it did not necessarily corroborate the claimed cause of them. Some of the injuries he claimed to have suffered, for example being dragged upstairs whilst handcuffed, should have left him with more scars
21. I was asked to find that the letter from the appellant's brother produced only at the hearing did not corroborate the appellant's account of events. The appellant's evidence as to what happened when and when he received the letters was confused and unclear. I was asked to place no weight on this letter.
22. The appellant had claimed to have an adverse political profile by the time he arrived in Istanbul which begged the question as to why he would have registered his presence with the mukhtar. He had produced no corroborative evidence from anyone in Turkey as to his claim to political activities there. There was no corroboration of his claimed attendance at protest rallies in the UK although he said that he had attended at least one. Whilst he had previously referred to

claimed difficulties with interpretation, this was not borne out by the record of his interview or the questions as to whether there had been any difficulties. He said that he had not been fingerprinted but his evidence was that he had been fingerprinted in Turkey. I was asked to find that the appellant was not credible and to dismiss the appeal.

23. Ms Sirikanda relied on her skeleton argument and submitted that the medical evidence provided strong corroboration for the appellant's account of events. Mr Jarvis was speculating as to whether the appellant should have more scars. The medical evidence had considered other possible causation. The medical report also dealt with the question of the appellant's mental health. I was invited to find that the appellant was credible and, to the appropriate lower standard, accept his account of events.
24. She argued that the appellant's account had been consistent with reported country conditions and very detailed. I was asked to read the interview record as a whole. The fact that the appellant had moved elsewhere within Istanbul was no indication that he would not be at risk because he had been "in hiding". It was more likely that he would be able to hide in a huge city like Istanbul rather than travelling to another city or area where he would arrive, stand out as a stranger and need to register. He had given good reasons for not seeking corroborative evidence from political associates in Turkey. It did not undermine his credibility that he registered when he first arrived in Istanbul.
25. Whilst it was accepted that there was no corroborative evidence of the appellant having taken part in demonstrations in this country I was asked to view this with his evidence as a whole and to find him credible. Much of the attack on his credibility turned on the question of when his brother's house was raided after the appellant left Turkey. In reply to my question, Ms Sirikanda said the appellant's position was that there had been two raids on the appellant's brother's home. The appellant would still be at risk even if the raids had not taken place. The authorities in Turkey would be able to access their records about him. These would reveal, amongst other things, that his release in 2012 was conditional and that he had breached the conditions of his release. He had provided a satisfactory explanation as to the difference between the PKK and the KCK.
26. Ms Sirikanda submitted that the appellant would still have problems in his home area. This was Dersin, not Istanbul. I was asked to look at the evidence in the round and to allow the appeal on Refugee Convention grounds.
27. I reserved my determination.
28. The respondent accepted that the appellant was who he claimed to be and that he was Turkish. I find that the appellant is a Turkish national born on 17 December 1984. His ability to speak Zazaki as well as Turkish is a strong indication that he is of Kurdish ethnicity

and comes from Dersin province where that language/dialect is spoken. Nevertheless, he lived for many years in areas where the predominant language would have been Turkish and he is likely to have used this on an everyday basis. I find that the appellant is of Kurdish ethnicity and comes from Dersin province.

29. As to the appellant's account of events in Turkey, there are factors which militate both for and against his credibility. His account is largely consistent with reported conditions and events in Turkey.
30. The Medical Foundation is a respected organisation whose reports are usually given considerable weight. The report on the appellant, prepared by Dr Kamlana, complies with all the legal requirements for a medical report a case such as this. It records the appellant's account of events, his scars and other signs of injuries. These are set out in detail. The appellant did not claim that all the scars he bears were the consequences of torture or serious ill-treatment at the hands of the authorities in Turkey. The doctor's opinion is that the appellant's scars are either consistent with or highly consistent with the way in which the appellant claimed they were caused. The Istanbul Protocol set out by the doctor in Appendix D records the five levels of attribution; "not consistent", "consistent with", "highly consistent", "typical of" and "diagnostic of". The levels used by the doctor are in the middle range; "consistent with" which means the lesion could have been caused by the trauma described but is non-specific and there are many other possible causes and "highly consistent" which means that the lesion could have been caused by the trauma described, and there are few other possible causes. The doctor's overall conclusion is that taken together the scars are highly consistent with their attribution and the number of scars coming within these categories diminishes the likelihood of their resulting from other causes.
31. In the absence of cross examination on the point I consider Mr Jarvis' submission that some of the ill-treatment which the appellant claimed to have suffered should have resulted in further scarring to be speculative.
32. The medical report records that the appellant has been diagnosed with clinical depression by his GP, has been prescribed antidepressants and has periods of absentmindedness. Although currently at low risk of suicide it is thought that he is likely to become a moderate/high risk should his asylum claim be rejected. At paragraph 88 the doctor said; "Finally, it should be noted that traumatic experience can be a clinical factor in explaining occasional discrepancies on the part of the client in the naming of political groups in his Statement of Evidence interview. Mr Altepe further states in his Personal Statement that the SEF interview was over a very long day where he could not concentrate"
33. This is not the clearest of evidence as to the appellant's mental ability but provides some support for the claim that his ability to recall

events and give evidence may be impaired by what has happened to him.

34. In the refusal letter dated 8 May 2012 sets out, between paragraphs 23 and 45, detailed reasons, mainly inconsistencies, as to why it was concluded that he was not a credible witness his account of events should not be believed. The appellant addressed most of these reasons in the first of his witness statements in the bundle before me. Mr Jarvis does not accept these explanations.
35. Over the years the “legitimate” Kurdish political parties in Turkey have changed their names, usually when one became illegal or it was thought that this was likely to happen. I accept that HADEP, DEHAP, DTH, DTP and BDP are continuations or reincarnations of the same or a similar political party or a combination of parties. I accept that those involved with them might continue to refer to the party by an earlier name, rather than the current one. I give more weight to the fact that the appellant was able to name the leaders of two political parties rather than the fact that he got them the wrong way round.
36. It is unfortunate that if the appellant thought that what he was saying during his interview was not being interpreted properly there was no reference to this in the usual questions as to the conduct of the interview. The force of his complaint is diminished as a result.
37. There is an inconsistency between the appellant’s explanations as to the difference between the PKK and the KCK, whether the KCK is the urban and/or the youth wing of the PKK, but it is correct to say that they are interrelated. The appellant was able to give some accurate answers to questions about HADEP and successor parties. I do not consider that there is any material inconsistency between the appellant stating that he had been stabbed in the hip as against the medical evidence that it was in the buttock. Shown the diagram as to the place of the scar the appellant said that he would refer to this as the hip.
38. I do not find it implausible that the appellant would leave his brother’s home and go and stay with a distant relative in another part of Istanbul. Istanbul is very large city where he could well have considered it safer to hide rather than going to another urban or rural area where he might stand out as a new arrival and need to register.
39. The appellant’s evidence as to whether the authorities had raided his brother’s home in Istanbul after he left Turkey became increasingly confused during his oral evidence. It was not helped by the fact that, understandably and in reply to a direct question in cross examination, he referred to two letters from his brother which he had given to his solicitors, whereupon it became apparent that those letters had not been disclosed even though the solicitors had had at least one of them translated. I admitted in evidence than one letter which was produced, with the translation and the accompanying manifest/delivery sheet from DHL. The other letter was not produced.

The reference in the letter that was produced to the funeral of a Kurdish woman who had been killed in Paris tends to indicate that any raid would have taken place after about January or February 2014. I have been shown a photo copy but not the original letter.

40. The appellant's claim seems to be that there were two raids on his brother's home in Istanbul in November 2013 and January or February 2014 together with another raid on the family home. The appellant was not able to give the date of either of them in his oral evidence, although in his witness statement he said that one of them was in November 2014.
41. I would have expected the appellant to have provided some corroborative evidence of his claim to have been involved in a protest rally in this country although the weight to be given to the lack of this is diminished because he does not claim to be at risk because of activities in this country.
42. I give greater weight to the fact that there is no corroborative evidence from the appellant's brother or any other member of the family in Turkey and no corroborative evidence from any colleague or more senior member of the political parties with which he claims to have been involved in Turkey. I am not persuaded that all of those who might have assisted are in prison and my attention has not been drawn to any country evidence which might support the contention that nobody would want to help him because of opprobrium attached to the fact that he has fled the country.
43. I have considered all the evidence in the round. On the one hand I weigh all the factors set out in the refusal letter and in Mr Jarvis' submissions which continue to militate against the appellant's credibility including those which I have not specifically addressed. On the other I weigh those in his favour, in particular the medical evidence. I consider the question of whether he is or is not credible to be finely balanced. However, bearing in mind that the burden of proof falls on the appellant and applying the appropriate standard of proof which is that of a reasonable likelihood, I find that the appellant is credible and I accept his account of events in all material respects.
44. In the light of Mr Jarvis' concession as to risk on return in these circumstances I find that the appellant has established that he faces a real risk of persecution were he now to return to Turkey. The risk would be for a Convention reason, namely his perceived political opinions. He would be at risk in Istanbul or his original home area. He is likely to have a record, to be identified either on return or within the country if he was able to get past the point of arrival. He would be at risk anywhere in Turkey.
45. I have not been asked to make an anonymity direction and I can see no good reason to do so.

46. The previous decisions in this appeal have been set aside. I remake the decision and allow the appellant's appeal on asylum grounds.

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Signed

Date 8 November 2014

Upper Tribunal Judge Moulden