



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/10280/2014

THE IMMIGRATION ACTS

Heard at Field House
On 8 December 2015

Decision & Reasons Promulgated
On 14 January 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

HUSSEYIN PEHLUL
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Neale counsel instructed by Duncan Lewis & Co Solicitors
For the Respondent: Mr T Melvin Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Miller promulgated on 30 March which dismissed the Appellant's appeal against a

decision dated 12 November 2014 to refuse his claim for asylum and issue removal directions from the UK.

Background

3. The Appellant was born on 10 February 1980 and is a national of Turkey. The App arrived in the UK in June 2006 and claimed asylum on 14 November 2013.
4. The Secretary of State refused the Appellant's application. The refusal letter gave a number of reasons:
 - (a) The Appellant's account of the circumstances in which he became involved in the DHKPC are vague and lacking in detail and not accounted for by the Appellant's medical evidence suggesting he has symptoms of PTSD.
 - (b) The Appellant has given inconsistent accounts of a central feature of his claim, his detention by the authorities.
 - (c) There are discrepancies between the history given by the Appellant to the Respondent and that given in the Medical Foundation report.
 - (d) It was not accepted that the Appellant was active in supporting the DHKPC and detained and tortured because of this and therefore it was not accepted that the Appellant would be of interest to the authorities on return.
 - (e) Even if it were accepted that the Appellant had been detained by the authorities because of his involvement with the DHKPC there was nothing to suggest that they were still interested in him.
 - (f) If the Appellant had difficulties in Istanbul, he could relocate to another part of Turkey.
 - (g) There is a healthcare system in Turkey and suitable medication for the Appellant's mental health issues. The problems did not engage Article 3.
 - (h) The Appellant did not qualify for leave under Appendix FM or paragraph 276 ADE(1) and there were no exceptional circumstances.

The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Miller ("the Judge") dismissed the appeal against the Respondent's decision. The Judge found :
 - (a) The Judge identified a number of inconsistencies and discrepancies in the Appellant's account (paragraph 30 (i)-(xi)) that led him to find that the Appellant had not given a credible account of his history.
 - (b) The Judge did not find the medical report of Dr Gibson dated 23 December 2011 particularly helpful finding that the diagnosis of PTSD was largely dependent on what the Appellant had reported to the Doctor.
 - (c) There was no up to date medical evidence postdating the report of Dr Gibson to suggest the Appellant still had anything significantly wrong with him.
 - (d) Given that the events alleged occurred 11 years ago even if the Appellant were detained briefly on return there was no evidence to suggest that he would still be of interest to the authorities.
 - (e) Mr Neale conceded that there was no Article 3 or 8 claim.
6. Grounds of appeal were lodged arguing that the Judge had erred in questioning the diagnosis of PTSD in 2015 because there was no up to date medical evidence given

that the diagnosis was accepted by the Respondent in their refusal letter in November 2014; it was also argued that the Judge placed too much weight on the inconsistencies in the Appellant's account failing to take into account the medical evidence of the impact of an accepted diagnosis of PTSD on his recollection.

7. On 5 August 2015 Upper Tribunal Judge Coker gave permission to appeal on all grounds.
8. At the hearing I heard submissions from Mr Neale on behalf of the Appellant that
 - (a) He relied on the two sets of grounds and skeleton argument.
 - (b) In relation to the first ground he argued that the Judge's approach to the medical evidence was flawed. The Judge was not entitled to conclude that there was nothing significantly wrong with the Appellant because he was able to work and there was no evidence postdating that of Dr Gibson given that the Respondent had conceded that the Appellant suffered from PTSD and had been detained and tortured although they did not accept the reasons he gave for that detention and torture.
 - (c) The Judge went behind the medical evidence and made his own clinical assessment. There was no basis on which he could find that the ability to work was inconsistent with PTSD. The Judge was not entitled to draw an adverse inference from the failure to produce up to date medical evidence when the Respondent explicitly accepted the diagnosis. The Judge failed to address the argument that the fact that the Appellant suffered from PTSD could impact on his recollection of events given that there was documentary evidence in the bundle to that effect.
 - (d) If the Judge intended to go behind the concession made by the Respondent the parties should have been given the opportunity to address the matter.
 - (e) In relation to the second ground it was argued that the Judge's credibility findings were not clear in that he failed to engage with his explanations given for the alleged discrepancies.
 - (f) The Judge in making the finding that there was no evidence of a continuing interest in the Appellant failed to engage with the background material about the renewed interest in the DHKPC. This went to the core of the Appellant's claim.
9. On behalf of the Respondent Mr Melvin submitted that :
 - (a) He relied on the Rule 24 Notice of 2 September 2015.
 - (b) The Judge gave adequate reasons for finding that the Appellant was not credible and attaching little weight to the expert report given that there was no up to date medical evidence and the Appellant had failed to register with a GP.
 - (c) In relation to the credibility findings the grounds are simply an attempt to re argue the case.
 - (d) The Judge was required to assess the risk on return and given that the events occurred over 10 years ago and that the Appellant had no recent links with the organisation the Judge was entitled to conclude he would not be of interest to the authorities.
10. In reply Mr Neale on behalf of the Appellant submitted that the Judge failed to engage with the argument that the discrepancies in the Appellant's account were plausibly attributed to PTSD, a diagnosis that the Respondent had accepted.

Finding on Material Error

11. Having heard those submissions, I reached the conclusion that the Tribunal made material errors of law.
12. The failure of the First-tier Tribunal to address and determine, as was argued by Mr Neale, whether the diagnosis of PTSD could have accounted for the discrepancies that the Judge found undermined the credibility of the Appellant's account of the circumstances in which he was detained and tortured constitutes a clear error of law.
13. I also accept that the parties, as a matter of procedural fairness, should have been given an opportunity to address the Judges decision (paragraphs 32-33) to go behind the diagnosis of PTSD made in the report of Dr Gibson given that this diagnosis had been expressly conceded by the Respondent.
14. These errors I consider to be material since had the Tribunal conducted this exercise the outcome could have been different. That in my view is the correct test to apply. I therefore set aside the decision of the Judge.
15. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First Tier Tribunal if the Upper Tribunal is satisfied that:
 - (a) *the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or*
 - (b) *the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.*
16. In this case I have determined that the case should be remitted because the Appellant did not have a fair hearing due to the Judges failure to engage with a central feature of his claim, that the diagnosis of PTSD could have explained the apparent discrepancies in his account. This decision I am satisfied infected all of the findings and therefore none of the findings of fact are to stand and the matter will be a complete re hearing.
17. I consequently remit the matter back to the First-tier Tribunal sitting at Taylor House to be heard on a date to be fixed before any First-tier Immigration judge other than Judge K S H Miller.

Signed

Date 3.1.2016

Deputy Upper Tribunal Judge Birrell