



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/10737/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 12<sup>th</sup> April 2018

Decision & Reasons Promulgated  
On 15<sup>th</sup> May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

OG

(ANONYMITY DIRECTION CONTINUED)

Respondent

**Representation:**

For the Appellant:

Mrs H Abosie, Senior Home Office Presenting Officer

For the Respondent:

Mr A Burrett, Counsel instructed by Wick and Co, Solicitors

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Iqbal to allow OG's appeal against refusal of his protection claim. For convenience I shall hereafter refer to the parties in accordance with their status before the First-tier Tribunal. In other words, I shall therefore refer to OG as "the Appellant" and the Secretary of State as "the Respondent".
2. The Appellant's original case is usefully summarised at paragraph 9 of the judge's decision, which I gratefully adopt:-

“The Appellant’s account is that his father left Turkey to come to the United Kingdom and the Appellant continued to live in Turkey with his mother and two younger siblings whilst his uncle managed the farm and took care of the family financially. The Appellant’s mother did not tell the Appellant the reason his father came to the United Kingdom. The Appellant states that for the eight years he attended school but (sic) he was bullied and beaten because he belonged to the Kurdish ethnic group. The teachers would occasionally beat him too. He was threatened not to report matters to the police as these individuals were very familiar with the authorities and this would cause more trouble for the Appellant. The Appellant’s family could not help and could not stop any of this and he did not know the reason why his family did not relocate to another area in Turkey.”

He gave the above account when he was initially encountered by the UK immigration authorities. However, he later claimed that he also been detained by the authorities in Turkey a few months prior to his leaving. By this account, which he mentioned for the first time in written representations made on the 18<sup>th</sup> July 2012, he had been walking in his village with three friends when they were arrested by the authorities, detained for three days, beaten, questioned, told not to mention their whereabouts on release, and warned that if they were caught again they would be killed. The judge noted all of this at paragraph 14 of her decision.

3. The Secretary of State did not believe that the Appellant was Kurdish. This was principally because when he had been questioned about his ethnicity he had been unable to name his particular Kurdish dialect or to answer questions about the history of the Kurdish people and its festivals. The judge noted this at paragraph 13 of her decision. Secondly, the Secretary of State did not accept that the appellant had been detained and ill-treated as he claimed shortly before leaving Turkey. This was because that he had not mentioned it initially, which suggested that it was a recent fabrication intended to bolster his original asylum claim. The judge noted this in paragraph 14 of her decision. Finally, the Secretary of State considered that the Appellant had given contradictory accounts in his witness statement and each of his earlier interviews. He stated (in his Screening Interview) that he had never been arrested and (in his asylum interview) had not experienced any other problems in Turkey apart from being bullied. He also stated that he was not aware of the reason why his uncle had sent him and his cousin away. However, he later contradicted both these statements. This was duly noted by the judge at paragraph 16 of her decision.
4. The Appellant’s explanation for the above anomalies and discrepancies was that at the time of his interviews he had been suffering from the adverse psychological consequences of the ill-treatment he claimed to have suffered shortly before leaving Turkey. In support of this claim, he relied upon the report of a psychologist, Sheila Melzak, who opined that he was suffering from post-traumatic stress disorder. The Secretary of State’s position with regard to that report was that Ms Melzak had not looked at all the evidence in the round and had simply based her diagnosis on what she had been told by the appellant and the little weight should therefore be attached to her opinion.

5. The Secretary of State's grounds of appeal are that in making positive credibility findings, the judge failed to look at the evidence in the round, failed to engage with the inconsistencies in the Appellant's narrative and his apparent ignorance of Kurdish language and culture, and instead concentrated exclusively upon the report of Sheila Melzak.
6. In refusing permission to appeal on the 20<sup>th</sup> November 2017, First-tier Tribunal Judge Grimmett said this of the Secretary of State's grounds (as summarised above) -

"That does not appear to be the position because the Judge took into account the Appellant's age as well as the health issues and also noted the evidence of the Appellant's sister which corroborated his account".

However, the Secretary of State renewed her application, and this time it was granted by Upper Tribunal Judge Kekić on 10<sup>th</sup> January 2018. She said:-

"Whilst the Judge confirms in the determination that he has considered the evidence in the round, I can see no attempt on his part to resolve the issues summarised at paragraphs 13, 14 and 16 which formed the Respondent's case. Arguably, he should have considered all the evidence before placing the weight he did on the PTSD diagnosis."

Having carefully considered the rival submissions of Mrs Abosie and Mr Burrett, I have reached the same conclusion as Judge Grimmett rather than that of Upper Tribunal Judge Kekić. This is for the following reasons

7. The judge summarised her reasoning at paragraph 36 of her decision:-

"Having considered the totality of the evidence before me in relation to the account given by the Appellant as to his detention and ill treatment which when examined against the mental state of the Appellant, treated by Sheila Melzak and her team, I find to the lower standard of proof applicable the Appellant's account is corroborated by his resultant state of mind, as well as, background evidence which highlights the treatments of Kurds generally, in particular those suspected of associated with the PKK, HDP and BDP."
8. It is in my view clear from this passage that the psychological report of Sheila Melzak was not the decisive let alone sole reason for the judge's finding that the Appellant had succeeded in substantiating his claim. On the contrary, it is clear that she in fact treated Ms Melzak's opinion as nothing more or less than evidence that was capable of 'corroborating' his account. The judge moreover made it clear that she also considered the plausibility of the Appellant's account was corroborated by background country information relating to Turkey.
9. But the matter does not rest there. As I have previously observed, the judge had noted at paragraph 13 of her decision that the Respondent was not satisfied that the Appellant was of Kurdish ethnicity This matter was specifically addressed at paragraph 41 of the judge's decision:-

“It is of note that the Appellant’s sister who has now been granted asylum in the United Kingdom, was found by the Immigration Judge hearing her appeal, to have been arrested due to HDP activities and suspected links with the PKK. This is certainly [a] factor to be taken into account together with the background of other family members who have claimed asylum in the UK successfully for similar reasons.”

10. The judge thereby made it clear that she was following an earlier decision in which the Appellant’s sister had been found to be at risk of persecution in Turkey due to her association Kurdish politics. It was thus reasonable for the judge to infer that the appellant shared her ethnicity. That this reasoning was not in any sense dependent upon the opinion of Sheila Melzak.
11. Perhaps the issue that had the greatest potential for undermining the credibility of the Appellant was his initial failure to mention what could be regarded as the core of his claim; namely, his detention and torture by the authorities. The judge set out the appellant’s explanation for that failure at paragraph 31 of her decision:

“He claims that he did not mention this in interview as he was only 15 years old and had learnt from a very young age to be scared of those in authority, therefore he was fearful that details he disclosed would be passed on to the Turkish authorities.”

She gave her reasons for accepting that explanation at paragraph 37:-

12. It was not disputed that the appellant was only 15 years at the time. He would thus necessarily have been vulnerable. When dealing with young and vulnerable people, particularly those who are suffering from mental health difficulties, it is entirely appropriate to attach particular weight to background country information and other objective evidence when examining the question of whether inconsistencies in the account given by such a claimant should be treated as undermining his or her credibility. It is moreover clear from paragraph 37 of her decision, that the judge did address the inconsistencies and failure to mention the core of his claim at an early stage and that she fully explained why she was nevertheless prepared to give him the benefit of the doubt. It is also noteworthy that the majority of those reasons were not dependent upon the opinion of Sheila Melzak. The Respondent may not agree with those reasons but this does not mean that they were legally erroneous.
13. In conclusion, I am satisfied that the judge looked at the evidence in the round, attached appropriate weight to the expert evidence within the context of the evidence as a whole, and reached a balanced decision that was reasonably open to her on the evidence.

### **Notice of Decision**

The appeal is 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.

Signed

Date: 9<sup>th</sup> May 2018

Deputy Upper Tribunal Judge Kelly