Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/11067/2018**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 21 February 2019	**On 26 February 2019**

Before

Deputy Upper Tribunal Judge MANUELL

Between

Mr K T
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms M Sirikanda, Solicitor (Ahmed Rahman Carr)
For the Respondent: Ms S Cunha, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed with permission granted by Upper Tribunal Judge Grubb on 21 January 2019 against the decision and reasons of First-tier Tribunal Judge Onoufriou who had dismissed the appeal of the Appellant against the

refusal of his international protection claim. The decision and reasons was promulgated on 26 October 2018.

2. The Appellant is a national of Turkey, born on 16 January 1983, and of Kurdish ethnicity. Neither his nationality nor ethnicity were expressly challenged by the Secretary of State for the Home Department. The Appellant claimed that he was at risk on return from the Turkish government and its agencies because of his separatist political opinion. After reviewing the evidence, Judge Onoufriou found that the Appellant was at best a low level activist for HDP, would be of no significant interest to the Turkish authorities and was not at real risk on return as a failed asylum seeker.

3. Permission to appeal was granted in the Upper Tribunal notwithstanding the earlier refusal of permission below because it was considered arguable that the judge had had wrongly placed little weight on the psychiatric evidence and had fallen into the Mbanga [2005] EWCA Civ 367 error of failing to reach credibility findings with sufficient regard to the medical evidence.

4. No notice under rule 24 had been served by the Respondent, but Ms Cunha indicated that the appeal was indeed opposed.

Submissions

5. Ms Sirikanda for the Appellant relied on the Upper Tribunal grounds of onwards appeal and the Upper Tribunal grant of permission to appeal. In summary, Ms Sirikanda contended that the judge had failed to engage adequately with the medical evidence which had demanded proper and close attention, and had given insufficient weight to it. The judge had used his adverse credibility findings already reached as grounds for giving little weight to the expert's report. The Mbanga (above) error had been committed, and other relevant judicial guidance concerning credibility assessment had not been followed. The judge had confused the symptoms of PTSD with its causes, which were life threatening events. The judge had not recognised the Appellant's vulnerability when assessing his evidence. The assessment of risk on the case at its highest was mistaken. The whole determination was problematic. The decision and reasons was unsafe and should be set aside and the appeal reheard before another judge.

6. It was not necessary to call on Ms Cunha.

No material error of law finding

7. The tribunal reserved its decision, which now follows. The tribunal must reject the submissions made on behalf of the Appellant. In the tribunal's view, the errors asserted to exist in the decision and reasons are illusory. Indeed, in the tribunal's view the grant of permission to appeal was a very liberal one, because essentially the dispute is no more than one over findings of fact lawfully reached with which the Appellant disagrees.

8. The determination was carefully prepared in depth by a very experienced judge who correctly placed the appeal into the context of current country conditions in Turkey. As the judge noted, the Turkish authorities have assumed sweeping powers and are accused of acting very heavy handedly against separatists, and suspected separatists, making it less probable that any persons perceived to be of continuing interest to the authorities would be leniently treated. It was thus a matter of significance that the Appellant had never been charged with any offence despite the number of his claimed arrests. As Judge Andrew pointed out when refusing permission to appeal in the First-tier Tribunal, the judge had quite clearly taken full account of the medical evidence when reaching his findings, having considered the medical evidence provided as part of his "in the round" assessment. That can readily be seen from the determination, where from [47] onwards the judge analyses and discusses the expert's report in depth. The judge had also specifically considered the Appellant's possible vulnerability and by necessary implication, any effect or impact that vulnerability might have on the credibility assessment.

9. The structure of the appeal shows that the judge applied the correct, lower standard of proof throughout. Perhaps even more importantly, on a fair and full reading of the determination, it is clear that the judge was constantly testing his primary conclusions, giving anxious scrutiny to the evidence, close attention to the rival submissions and considering the alternatives: this can be seen (by way of example) at [47] of the determination, where the judge examines the alleged discrepancy raised by the Respondent over the number of detentions the Appellant claimed to have had.

10. This was far from a situation of a judge placing the credibility cart before the medical evidence horse, as it were. There was a genuine evaluation in the round, which among other matters properly noted the absence of potentially relevant evidence reasonably obtainable (see TK (Burundi) [2009] EWCA Civ 40), as well as implausible elements of the Appellant's story, such as giving a speech to a large crowd. These were all matters for the tribunal to assess, including alternative (and it might be thought, perfectly obvious) realistic explanations for the scarring observed by the expert, such as the Appellant's past work as a builder and decorator for a lengthy period. The tribunal gave adequate reasons for giving little weight to the medical report.

11. Nor can this very experienced judge be held to have confused the symptoms of PTSD with its causes. The judge adopted the analysis in HE (DRC) [2004] UKAIT 321 and gave proper reasons for finding that the PTSD diagnosed was not reasonably likely to have been caused by the Appellant's claimed mistreatment at the hands of the Turkish authorities. The judge had demonstrably examined the whole of the evidence with anxious scrutiny, in the current context of country conditions in Turkey. The judge's assessment of risk on return, on the alternative basis of the claim at its highest (with the exception of the speech) was open to him.

12. In the tribunal's view, the submissions advanced on the Appellant's behalf amount to no more than disagreement with the judge's adverse findings of fact, all of which were available to him on the evidence presented, which evidence was plainly sufficiently considered and the consequent findings adequately reasoned. The tribunal finds that there was no material error of law in the decision challenged.

DECISION

The appeal is dismissed_

The making of the previous decision did not involve the making of a material error on a point of law. The decision stands unchanged, save that the anonymity order is discharged.

Signed **Dated** 21 February 2019

Deputy Upper Tribunal Judge Manuell