Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: PA/13332/2018
PA/01175/2019

THE IMMIGRATION ACTS

Heard at Field House
On 23 September 2019

Decision & Reasons Promulgated
On 26 September 2019

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

AB & HB
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Wood, instructed by Virgo Solicitors
For the Respondent: Ms Everett, Senior Presenting Officer

DECISION AND REASONS

1. The appellants are brothers. The first appellant is a Turkish national who was born on the 31st of August 1993. The second appellant is also a Turkish national who was born on the 5th of May 1995. They appeal against a decision which was issued by First-tier Tribunal Judge Monson on 21 June 2019, dismissing their appeals against the respondents' refusal of their claims for international protection.

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Background

2. The first appellant arrived in the UK on 16 October 1996 and claimed asylum on arrival. He gave a detailed account of the reasons why he was seeking international protection. For present purposes, it suffices to state that he claimed to be an Alevi Kurd who had been targeted by the authorities due to his actual or imputed political opinion. He said that he had been detained on four occasions in Turkey. These detentions had occurred in 2012, 2013 and two in 2016. During the final detention, he stated that he had been tortured on suspicion of links to the PKK. It was his treatment during this detention which had prompted his departure from Turkey.

3. The second appellant arrived in the UK on 20 June 2018 and claimed asylum on arrival. He also stated that he was an Alevi Kurd who had been targeted by the authorities due to his actual or imputed political opinion. He said that his brother had fled to the UK in 2016, having been arrested and tortured by the authorities. He had been arrested in June 2018 after attending the HDP building. He had been ill-treated in detention and had been taken to hospital by the authorities before he was released. It seemed that the authorities suspected his brother of being in Syria, and they did not believe the second appellant when he stated that his brother was in the UK. He was released on condition of becoming an informant.

4. Both claims were refused by the respondent because she did not accept that the accounts I have summarised above were reasonably likely to be true. In support of that conclusion, she pointed to aspects of the accounts which she considered to be implausible and inconsistent.

The Decision of the First-tier Tribunal

5. The appeals were heard by Judge Monson on 15 May 2019. The appellants were represented by Mr Bonavero of counsel. The respondent was represented by Mr Coffey of counsel. The judge was presented with evidence of the appellants' activities in support of the Kurdish cause in the UK and medical evidence in respect of both appellants. In the case of the first appellant, that took the form of an expert report from a Consultant Psychiatrist named Dr Cutting. In the case of the second appellant, the medical evidence was from his General Practitioner and recorded, *inter alia*, that he had been seen by the GP in September 2018. He had stated at that appointment that he had been tortured in Turkey.

6. Judge Monson heard oral evidence from both appellants, who were examined by Mr Bonaveroa and cross-examined by Mr Coffey. He heard detailed submissions from both counsel.

7. At [63]-[87], the judge gave his reasons for concluding that he was only able to accept part of the accounts given by each appellant. In respect of the first

appellant, he accepted on the lower standard he had been arrested on three occasions and that he had been a low-level member of HDP who had taken part in small scale activities: [75]. He did not consider that the first appellant had an adverse profile with the Turkish authorities as someone who was engaged in separatist activity. That was reflected, the judge found, in the fact that the first appellant was able to leave Turkey using his own passport in 2016. The judge was unable to accept on the lower standard that the fourth detention took place: [76]-[79].

8. In respect of the second appellant, the judge accepted on the lower standard that he had become a member of the HDP in May 2016 and that he had also undertaken some low-level activities for the party. He did not consider, however, that he had fallen under suspicion of separatist activities, or that he had been detained by the authorities in 2018: [87]. On the basis of the findings of fact he had reached, the judge did not consider there to be any risk to the appellants on return to Turkey: [88]-[90].

Discussion

9. In the grounds of appeal, five separate complaints are made about the reasoning process which led Judge Monson to the conclusions I have summarised above. Ms Everett, who appeared before me on behalf of the Secretary of State, accepted that at least two of those complaints were well-founded. She accepted that the judge's assessment of the appellants' credibility was vitiated by legal error and could not stand. In order to understand the reasons that she made those entirely proper concessions, it is necessary to set out [70]-[73] of the judge's decision:

> "[70] Secondly, in the case of AB, he only complained of the signs and symptoms of mental health in September 2018, which is over 2 years after he had arrived in the UK. There is also no clear causal connection between the symptoms of depression diagnosed by the GP - and also by the consultant psychiatrist - and the traumatic experience of being tortured in detention; and, indeed, the consultant psychiatrist does not in terms of pine but there is any causal connection.
>
> [71] Thirdly, it is not credible that AB did not seek medical treatment following his release from detention if it is true that he was tortured. He did not have to report to the police immediately. There was a time for him to obtain medical treatment in Turkey. It is not credible that doctors in Turkey do not abide by the Hippocratic Oath, or some equivalent ethical standard, such that patients cannot seek medical treatment from them in confidence where their injuries have been deliberately inflicted by agents of the state. Moreover, no background evidence has been brought forward which lends credence to such a proposition. It is also not credible that AB would have genuinely believed that he could not trust a Turkish doctor. Failing that he had plenty of time to obtain medical treatment in the

> UK, particularly if he had a genuine belief that the torture inflicted on his genitals might mean that he would be unable to procreate.
>
> [72] With regards to HB, he was not asked during his asylum interview about his treatment in detention. But he was given the opportunity to volunteer further information at the end of the interview. Since he claims that he began to volunteer information about torture during the interview, but was stopped from doing so as he had not been asked about it, his credibility is undermined by the fact that he did not seize the opportunity to volunteer the information at the end of the interview.
>
> [73] It is not credible that he would not have been examined by doctors at a hospital if he had been taken there by the police following two days of torture. The implication that the doctors gave him a clean bill of health on the police's instructions without examining him is preposterous, for the same reasons discussed in [71] above."

10. Ms Everett accepted that the judge had failed, in coming to the conclusions at [71]-[73], to consider the appellant's claims in the context of the background evidence on Turkey. As Keene LJ put it in Y v SSHD [2006] EWCA Civ 1223, he erred in failing to consider their claims through the spectacles provided by the country information. The material cited in the grounds of appeal settled by Mr Bonavero shows that, far from being 'preposterous', it is well known that doctors in Turkey are sadly compelled to act on the instructions of the police and other security agencies who are seeking to ensure that detainees are unable to produce medical evidence of ill-treatment. The most recent report from the US Department of State contains two sections, as cited in the grounds, in which doctors were noted to have acted in precisely that manner. In her brief submissions before me, Ms Everett was constrained to accept that the judge's decision disclosed a 'clear problem' as a result, and that the first of the grounds of appeal was made out.

11. Ms Everett also accepted that the fifth of the grounds of appeal was made out. This ground relates to the conclusions in [72]. It is clear that the judge attached some significance to the point that the second appellant had not put forward an account of torture in interview. In the grounds of appeal, this conclusion is said to be undermined in two ways. Firstly, it was said to be improper to criticise the second appellant for not volunteering this evidence, when the onus was clearly on the respondent to explore his treatment in detention (page 34 of the respondent's policy on *Asylum Interviews*, version 7, refers). Secondly, the point was said in any event to be unsound in circumstances in which the second appellant's GP records showed quite clearly that he had reported or alleged torture to his doctor *before* the asylum interview took place. Ms Everett accepted that at least the second of these complaints was borne out. That must be right; it could scarcely be said that the complaint of torture was a late invention when the

second appellant is known to have raised it with his doctor before the asylum interview took place.

12. Whilst nothing turns on it, I accept that the first complaint in ground five is also made out. In accordance with her published policy, it was for the respondent to probe the second appellant's account during the interview. It was for the respondent to ascertain, when faced with a man who said that he had been held in Turkey on suspicion of separatist activity, whether that detention was accompanied (as is sadly so often the case in Turkey) by torture or ill-treatment. If the second appellant was not asked directly about his treatment in detention, it was improper to draw an adverse inference from the fact that he did not volunteer this information at the conclusion of the interview.

13. As I have already recorded, Ms Everett accepted that the errors established by grounds one and five sufficed to undermine the judge's assessment as a whole. She submitted that the proper course was for the decision to be set aside and reheard *de novo*. This was the result for which Ms Wood also contended. I informed the advocates that I was minded to remit the appeal to the First-tier Tribunal, given that an entirely *de novo* assessment was required. Both were content with that course and I shall so order.

<u>Notice of Decision</u>

The decision of the FtT (IAC) was vitiated by material legal error and is set aside. The appeal is remitted to be heard *de novo* at Taylor House by a judge other than Judge Monson.

<u>Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008</u>

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

MARK BLUNDELL
Judge of the Upper Tribunal (IAC)
24 September 2019