Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01156/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 27th February 2020	**On 16th March 2020**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

UA
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Saeed, Aman Solicitors Advocates Ltd
For the Respondent: Mr S Kotas, Home Office Presenting Officer

DECISION AND REASONS

1. An anonymity direction was made by the First-tier Tribunal ("F*t*T"), and as this a protection claim, it is appropriate that a direction is made. Unless and until a Tribunal or Court directs otherwise, UA is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies amongst others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.

2. It is common ground between the parties that the appellant is a national of Turkey and of Kurdish ethnicity. His appeal against the respondent's decision of 26th January 2019 to refuse his claim for asylum and humanitarian protection was dismissed by First-tier Tribunal Judge Housego ("the judge") for reasons set out in a decision promulgated on 16th October 2019.

3. The appellant claims the decision of the judge is vitiated by errors of law that were material to the outcome of the appeal. Permission to appeal was granted by Upper Tribunal Judge Sheridan on 9th January 2019.

The decision of First-tier Tribunal Judge Housego

4. The background to the claim for international protection is summarised at paragraph [3] of the decision of the First-tier Tribunal Judge. At paragraph]28], the judge noted the appellant attended the hearing but did not give evidence. The only witness to give evidence was the appellant's older sister. At paragraphs [40] and [41] of his decision, the judge stated:

> "40. The appellant elected not to give evidence. There is no medical evidence that he is unable to do so. A vulnerable witness direction could have been sought, but was not. This is a fee exempt appeal, and it was not said that lack of funds precluded current psychiatric evidence.
>
> 41. It is therefore necessary to decide the appeal on the basis of the evidence that was produced. I do not draw any adverse inference from the absence of evidence from the appellant."

5. The judge noted, at paragraph [43], that there was no evidence from the appellant's parents or from the appellant's eldest brother [A]. The judge noted, at paragraph [45], that the witness statement of the appellant's younger brother [M] was tendered on the day of the hearing. He claimed that he was having to move about to avoid detection by the authorities in Turkey, and that the police have visited the family home to ask after both him and the appellant.

6. The oral evidence of the appellant's sister is referred to at paragraphs [46] and [47] of the decision. The judge noted, at [46], that *"She knew*

only what she had been told since her brother arrived in the UK …". The judge noted that she had visited home in September 2018 when she was about six months pregnant. She had stayed for about two months as her mother had broken her foot. Her evidence was that her younger brother, [M], was at home. She said that she had last spoken to her brother [M], about four days ago and "*… it was probably on the landline at her parents' home …"*.

7. At paragraph [49], The judge refers to the application made by the appellant in April 2018 for a business visa, to come to the UK. The appellant had disclosed in that application that he had travelled to Germany as a tourist in March 2018. The judge noted the appellant had voluntarily travelled to Germany on his own passport, passing through immigration control, and although that pre-dated his arrest and detention, it did not support his claim of being fearful of the police. I pause to note at this stage that although the judge refers to the visit to Germany as a visit that 'pre-dated' the appellant's arrest, the appellant had claimed in interview that his problems in Turkey had started on 1st May 2017 when he had been caught and taken to a police station after attending 'Yesil Su Parki in Gaziantep'. He had described in interview, a second encounter with the authorities when he had been caught leaving Nurdagi. On that occasion he claimed that he was not taken to the police station but was given a 'good beating' just beside the road. He had been with his brother and that had occurred in 2016. Both these events relied upon by the appellant as the core of his account, pre-date the visit to Germany.

8. The judge's findings and conclusions are set out at paragraphs [51] to [59] of the decision. At paragraph [51] of his decision, the judge noted the appellant has some mental health difficulties but concluded the rest of the appellant's account (and the cause of them) is not reasonably likely to be true. The judge stated at paragraph [51] that "*The existence of mental health problems is not enough to enable the appeal to succeed.".* The judge rejected the appellant's claim that the application for a visa in April 2018 had been made by an agent on the appellant's behalf for asylum reasons. At paragraph [54] of his decision, the judge stated:

> "The evidence of his brother [M] of having difficulties with the authorities is plainly untrue, given the clear evidence of the appellant's sister. I discount the explanation that his problems had been concealed from her throughout. There is no evidence from the appellant's parents (recently in the UK) or from his elder brother [A], also in the UK and who knew more about the appellant (and presumably also about [M]) than his sister [AH], who knew only what others told her. Her evidence was of life lived peacefully on a farm. I do not have evidence from the appellant to rely upon save the notes of interview and his written statement. While I consider these, the written statement has limited weight in the absence of oral testimony (for the absence of which there is no current medically evidenced foundation).

9. The judge concluded at paragraph [55], that even to the lower standard of proof and the fact that the appellant has mental health issues, the appellant has not met the lower burden of proof on him to establish that he is at risk upon return.

The appeal before me

10. The first ground of appeal is that the judge gives inadequate reasons in two respects. First, for rejecting the evidence of the appellant's sister and second, for the conclusion that the appellant would not be at risk upon return. The appellant claims the judge gives inadequate reasons for the finding that it is not plausible that the appellant's sister was not told of her brother's problems. It is said that it matters not whether the appellant's sister spoke to [M] over the phone when she called her parents landline, or face-to-face. The appellant claims the judge failed to properly engage with the evidence and failed to give adequate reasons for rejecting that part of the evidence given by the appellant's sister. It is said that the error is material because that is the only reason given for rejecting the evidence of the appellant's brother [M].

11. This first ground of appeal is entirely misconceived. Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted or rejected by the judge.

12. I was referred to the witness statement of the appellant's sister [AH] dated 26th September 2019. In that statement she confirms that she had

attended many demonstrations in Turkey, and she refers to photographs of her and the appellant at a demonstration about 10 years ago. She confirms that since arriving in the UK in September 2015, she has returned to Turkey once a year, every summer. She confirms that she is aware of the appellant's claim for asylum, but she did not know much about his application and found out that the appellant had been tortured. Mr Saeed confirmed that she had been informed by the appellant. I was also referred to the witness statement of the appellant's brother [M] dated 8th October 2019. In his statement he confirms that he does not have a fixed address and cannot live with his parents as he is wanted by the Turkish security forces. He claims that he had to leave his address because after his brother (*the appellant)* left, he was detained three times and tortured. He claims that on each occasion he was questioned about his brother. He claims that he and his brother *(the appellant)* were helping the HDP in the lead up to the referendum in Turkey in April 2017. He refers to an incident in the first week of April 2017 when they were stopped at a checkpoint, and the appellant was attacked by police officers, and he had had to take his brother to hospital as he was badly wounded.

13. As the judge correctly noted, the evidence of the appellant's sister was that she knew only what she had been told since the appellant arrived in the UK. At paragraph [45] of the decision the judge refers to the witness statement of the appellant's younger brother [M]. His evidence was that he was having to move about Turkey to avoid detection by the authorities and that the police visited home to ask after both him and the appellant. The judge found at paragraph [47], that the oral evidence of his sister, made the account of [M] unreliable. The evidence of his sister was that when she visited home in September 2018, [M] was at home and that she had been able to speak to him on the landline at her parents' home about four days before the hearing. Her account that [M] had been living at home with his parents when she visited and stayed with them for two months in September 2018, and that she was able to speak to him on the landline at her parents' home about four days before the hearing, is entirely inconsistent with the claim made by [M] in his witness statement

that he had to leave the family home after his brother left and he cannot not live with his parents because he is wanted by the Turkish security forces. It was plainly open to the Judge to conclude that the evidence of [M] that he was moving about to avoid detection by the authorities in Turkey, and that the police had visited the home to look for him and the appellant, was in the circumstances, entirely unreliable.

14. The appellant claims the judge gives inadequate reasons for finding that the appellant would not be at risk according to the country guidance, having noted that the country guidance is somewhat out of date and having had regard to the changes that have taken place in Turkey since 2004. Having rejected the appellant's account of events, as Mr Saeed accepted in his submissions before me, it was open to the judge to conclude that the appellant is not at risk upon return.

15. The second ground of appeal is that the judge made inadequate findings regarding the evidence given by the appellant's sister and the appellant does not know whether the evidence of his sister was accepted in part or in full, and what weight is placed upon her evidence. It is clear that the judge considered the evidence of the appellant's sister. The judge refers to her oral evidence at paragraphs [46] and [47] of the decision. The judge noted, at paragraphs [46] and [54] that she knew only what she had been told since her brother arrived in the UK. At paragraph [54] of his decision, the judge states that "*The evidence of his brother [M] of having difficulties with the authorities is plainly untrue, given the clear evidence of the appellant's sister.".* Whilst a statement from a family member is capable of lending weight to a claim, the issue will always be whether, looked at in the round, it does lend weight to the claim. Where there was a conflict in the evidence, the judge clearly preferred the evidence of the appellant's sister who had attended the hearing and gave evidence, but the judge was entitled to note at paragraph [54] in reaching his decision that her evidence regarding the matters leading to the appellant's arrival in the UK, were based entirely upon what others told her.

16. The third ground of appeal is that the judge stated at paragraph [41] of the decision that he does not draw any adverse inference from the absence of evidence from the appellant, whereas at paragraph [54] of the decision, the judge states "*.. I do not have evidence from the appellant to rely upon save the notes of interview and his written statement. While I consider these, the written statement has limited weight in the absence of oral testimony (for the absence of which there is no current medically evidenced foundation).* Mr Saeed submits the judge was wrong to attach little weight to the statement. He accepts there was no medical evidence before the Tribunal confirming the appellant was unable to give evidence, but there was evidence before the Tribunal confirming the appellant had been diagnosed with PTSD. Mr Saeed referred to the letters from Rose Dekowski, a High Intensity Therapist employed by Dorset Healthcare NHS Trust, dated 20th December 2018, 14th February 2019, and 3rd May 2019. The letters confirm the appellant's symptoms of PTSD are quite severe and that he is receiving EMDR (Eye Movement Desensitisation Reprocessing) treatment. In her letter of 14th February 2019, Rose Dekowski had said that the appellant has multiple traumatic events with severe social problems and "*He does not feel safe in England and his brain cannot separate the past from the present. His constant flashbacks caused by day-to-day life triggers, bring back memories from the past as real as if they were happening now in the present.".* She had expressed the opinion in February 2019 that the appellant *"... Seems very fragile to face a hearing in March ...".* In the letter sent by Rose Dekowski to the appellant on 3rd May 2019, she refers to the "PHQ9 score", which measures symptoms of depression and the "GAD7 score", which measures symptoms of anxiety, that had indicated some improvement, but noted that the appellant claimed the scores were not accurate as his mood depends on day-to-day events. It was decided at the time that there should be a break in the EMDR treatment, because the appellant felt unable to move on with therapy, and it was suggested that the treatment be continued after the hearing of his appeal.

17. Mr Saeed accepts that although the judge does not refer to the diagnosis of post-traumatic stress disorder, the judge refers at paragraph [12] of his decision to the immigration history of the appellant and the case management of the appeal. The judge noted the hearing of the appeal had previously been adjourned in February 2019 and July 2019 to enable the therapy the appellant was receiving to be completed and for the appellant to obtain a report concerning his ability to give evidence. Mr Saeed accepts there was no evidence before the Tribunal confirming the appellant was unable to give evidence and no psychiatric evidence regarding the appellant's ability to provide a cogent account of events, which may have been relevant to the credibility of the appellant's account of events.

18. It was in my judgement open to the judge to conclude at paragraph [54] of the decision that little weight could be attached to the written statement of the appellant in the absence of any oral testimony, the absence for which was not supported by any medical evidence. It is not suggested by the appellant that the judge did not conduct the hearing properly or make reasonable adjustments to accommodate the appellant during the hearing. The decision must be read as a whole. At paragraphs [51], the judge notes the appellant has some mental health difficulties, but that is not enough to enable the appeal to succeed.

19. The judge referred, at paragraph [12] to the application made on 4th July 2019 to adjourn the hearing on the grounds the appellant was suffering from PTSD, but his therapist had failed to confirm that he was fit to give evidence. That application was refused on 8th July 2019 because of a lack of medical evidence but the adjournment was subsequently granted on 9th July 2019 with directions for a report to be provided detailing the therapy received by the appellant and concerning his ability to give evidence. No such report was obtained or before First-tier Tribunal Judge Housego when the appeal was heard on 10th October 2019. There was a reference in the letters from Rose Dekowski to a diagnosis of PTSD but no evidence from a Consultant Psychiatrist as to how that diagnosis was reached or the traumatic event triggering the condition.

20. In the end, it was for the judge to decide the appeal on the evidence before him. The judge did not draw any adverse inference from the absence of oral evidence from the appellant. The judge did not reject the appellant's account because he did not give oral evidence. At paragraphs [39] to [40], the judge refers to the limited medical evidence before him. The judge accepted the appellant has some mental health difficulties, but in view of the paucity of medical evidence it was open to the judge to conclude that only limited weight could be attached to the evidence of the appellant as set out in the documents before him. That is not to say that the judge attached 'no weight' to that evidence. The judge considered the evidence of the appellant in the round, together with all the other evidence that was before the Tribunal. There was quite simply no evidence before the Tribunal to establish that any discrepancies in the appellant's evidence might be attributed to the appellant's mental health. The judge was entitled to attach little weight to the statement of the appellant, which as Mr Saeed accepts, did not address the respondent's reasons for refusing his claim for international protection, but focused upon his health. The judge properly noted that there was an absence of current medical evidence regarding his ability to give evidence. It was in my judgement, open to the judge to attach little weight to the appellant's evidence for the reasons set out.

21. Finally, the appellant claims there was no evidential basis for the conclusion at paragraph [54] of the decision that the appellant's brother [A], who is also in the UK, "*... knew more about the appellant (and presumably also about [M]) than his sister [AH], who only knew what others told her.".* Mr Saeed accepts there was no evidence from the appellant's brother [A] or the appellant's parents, as set out in paragraph [54] of the decision. Whether [A] knew any more than his sister [AH], is entirely immaterial to the outcome of the appeal.

22. The decision of the judge must be read as a whole. In my judgement, the appellant disagrees with the findings and conclusions reached by the judge as to the appellant's claim for international protection at paragraphs [51] to [56] of the decision, but the findings are not irrational or

unreasonable in the *Wednesbury* sense, or findings that are wholly unsupported by the evidence. The Judge did not consider irrelevant factors, and the weight that he attached to the evidence either individually or cumulatively, was a matter for him.

23. In my judgement it was properly open to the Judge to dismiss the appeal for the reasons set out in his decision promulgated on 16th October 2019. It follows that in my judgement the decision of First-tier Tribunal Judge Housego is not tainted by a material error of law and the appeal is dismissed.

Notice of Decision

24. The appeal is dismissed

25. The decision of First-tier Tribunal Judge Housego stands.

Signed Date 28th February 2020

Upper Tribunal Judge Mandalia