IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004964

First-tier Tribunal No:
PA/65708/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 7th of February 2025

Before

UPPER TRIBUNAL JUDGE SMITH
DEPUTY UPPER TRIBUNAL JUDGE GRAVES

Between

M A
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Nnamani, Counsel instructed by Howe and Co Solicitors
For the Respondent: Ms Lecointe, Senior Home Office Presenting Officer

Heard at Field House on Monday 27 January 2025

Order Regarding Anonymity
Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.
No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge D Wright promulgated on 24 August 2024 ("the Decision") dismissing the Appellant's appeal against the Respondent's decision dated 5 December 2023 refusing the Appellant's protection and human rights claims.

2. The Appellant is a national of Turkey of Kurdish ethnicity. He claims to be at risk from the Turkish authorities because of his support for and assistance given to the HDP. He says that as a result of that involvement, he has been accused of support for the PKK. Albeit not claiming to be a prominent supporter of the HDP, the Appellant says that the background evidence supports his claim to be at risk on account of his support for that organisation. He relies in particular on a Country and Policy Information Note entitled "Turkey: People's Democratic Party/ Green Left Party (HDP/YSP)" dated October 2023 ("the CPIN").

3. The Appellant claims that he was detained by the Turkish authorities in 2015 and 2021. He claims to have been ill-treated during those detentions and relies on a medical report of Dr Alfred Garwood dated 14 February 2024 ("the Medical Report") in support of that claim. He also says that his sister who remains in Turkey has destroyed documents which would confirm his arrests and detentions. He says that she did so because of fear for her own safety. There is no statement from his sister.

4. The Judge found the Appellant's claim of arrest and detention not to be credible. He accepted that the Appellant was a low-level member of the HDP but did not accept that this would place him at risk in Turkey. The Judge relied on section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 ("Section 8") as giving additional reasons why the claim should not be accepted. In particular, it was said by the Respondent in this regard that the Appellant had given false information on four applications for visitor visas when he had said that he had not received any cautions, warnings or reprimands in another country. That was inconsistent with his claim.

5. In relation to the Medical Report, the Judge referred to the guidance given in HA (expert evidence, mental health) Sri Lanka [2022] UKUT 111 (IAC) ("HA") and gave the report little weight because the doctor had not had sight of the Appellant's GP records (or had not referred to them) and had based his assessment on the Appellant's account alone. The doctor had not considered whether the Appellant might be feigning or exaggerating his symptoms in order to stay in the UK. He also did not accept the Appellant's account in relation to the arrests and

detentions due in part to the absence of a witness statement from his sister.

6. For those reasons, the Judge dismissed the appeal.

7. The Appellant appeals the Decision on three grounds summarised as follows:

   Ground 1: the Judge had misdirected himself in relation to the background evidence, in particular what was said in the CPIN. He had also ignored the country guidance given in IK (Returnees – Records – IFA) Turkey CG [2004] UKIAT 00312 ("IK").

   Ground 2: the Judge went beyond his remit by discounting the Medical Report on the basis that the Appellant would have had more scars if he had suffered the ill-treatment he claimed. The Judge had also ignored what was said in IK about the methods used by the Turkish authorities when ill-treating detainees.

   Ground 3: this ground largely overlaps with and repeats the first and second grounds when challenging the Judge's adverse credibility findings. It also challenges the Judge's reference to the absence of evidence from the Appellant's sister as being an impermissible requirement of corroboration.

8. Permission to appeal was refused by First-tier Tribunal Judge Thapar on 16 October 2024 in the following terms so far as relevant:

   "..2. It is unarguable the Judge provides cogent reasons for finding the Appellant's account lacked credibility including findings that the Appellant provided false information on four visa applications, inconsistencies in the Appellant's account, that he destroyed his passport and failed to claim asylum in Germany prior to his arrival in the UK.
   3. Furthermore, it is unarguably clear that the Judge provides cogent reasons, outside of the expectation that the Appellant should have more scars, for finding limited weight could be attached to the medical evidence. These include the fact that the Appellant's GP records were not considered and there was not consideration of the possibility that the Appellant may be feigning.
   4. It is unarguable that the Judge at paragraph 29 confirms the risk factors in IK have been considered. Additionally, it is unarguably clear from the Judge's explains [sic] from their assessment of the objective and subjective evidence it was found the Appellant had not established a risk on return as a low level member of the HDP.
   5. The findings reached were unarguably open to the Judge based on the evidence before the Judge. The grounds amount to no more than a disagreement with the Judge's findings.
   6. I discern no arguable error of law."

9. On renewal of the application to this Tribunal, permission was granted by Upper Tribunal Judge Grey on 24 November 2024 in the following terms:

> "At Ground 2 it is asserted that the Judge took an inappropriate position in stating at [32] of the decision that he would expect the appellant to have more scars resulting from his claimed torture. It is arguable that such a finding was outside of the Tribunal's competence and was not open to the Judge. It is also arguable that this finding fails to take into account [101] and [110] of IK (Returnees, Records, IFA) [2004] UKIAT 312 which refer to the less detectable methods of torture being used by the Turkish authorities. It will be for the appellant to establish that any error that may have been made in this regard is material. In view of the relevance of this matter to the assessment of the appellant's credibility, permission is granted on all grounds."

10. The appeal comes before us to decide whether there is an error of law. If we determine that the Decision does contain an error of law, we then need to decide whether to set aside the Decision in consequence. If we set the Decision aside, we must then either re-make the decision or remit the appeal to the First-tier Tribunal to do so.

11. We had before us a bundle running to 218 pages plus index containing the documents relevant to the appeal before us, and the Appellant's and Respondent's bundles before the First-tier Tribunal. We refer to documents in that bundle below as [B/xx]. Although Ms Lecointe had not received the bundle, she had been able to prepare using documents on the First-tier Tribunal's database and we were therefore able to proceed. As a result, however, there has been no Rule 24 Reply from the Respondent. The Appellant's solicitors are reminded that the uploading of the bundle onto CE file is not sufficient service on the Respondent and that this needs to be served directly on the Home Office.

12. Following submissions from Ms Nnamani and Ms Lecointe, we indicated that we were persuaded that the Decision contained an error of law. We also accepted that the Decision must be set aside in its entirety with no findings preserved as the errors asserted go to the overall credibility findings. For that reason, we accepted the parties' submissions that it was appropriate to remit this appeal having regard to the Tribunal's practice direction. This is because there will need to be a full de novo hearing of the appeal including findings of fact on all issues.

13. We also indicated that we would provide more detailed reasons for our conclusion in writing which we now turn to do.

DISCUSSION

Ground 1

14. At [§31] of the Decision, the Judge said this:

> "I find that he is a low-level member of the HDP. From the CPINs, I find that it is unusual for low level members to be harassed in the manner he described, albeit they are sometimes harassed."

He also said at [§29] of the Decision that he had regard to the risk factors set out in IK but did not make any express reference to those.

15. The Appellant's skeleton argument before the First-tier Tribunal at [§14] ([B/25-26]) sets out various extracts from the CPIN. Those extracts are also relied upon in the grounds of appeal. In particular, at [§12.4.1] of the CPIN there is evidence from an interview conducted by the Home Office's fact-finding mission where it was said that "low-level HDP members are targeted by the authorities and that anyone who criticizes the President is likely to be arrested, detained, imprisoned and criminalized". Also, at [§12.4.4] there is evidence from "[t]he Director of a Turkish organisation in the UK" that "'[b]eing ethnically Kurdish and outspoken politically', could cause the authorities to suspect an HDP member/supporter of supporting the PKK".

16. We accept of course that it remained open to the Judge to find the Appellant's account not to be credible notwithstanding that evidence. However, consistency of the account with external background evidence is part of the credibility assessment. The Judge's failure to engage with the evidence relied upon by the Appellant and to make a finding at [§31] of the Decision which on its face may be inconsistent with that evidence is, we accept, an error.

17. We also accept that, although the Judge said that he had considered the guidance in IK and the risk factors there set out, there is no engagement with the factors set out at [§14] of the Tribunal's decision. The Appellant's skeleton argument does not rely on any individual factor as applying in this case and of course the extent to which those factors apply depends on the Judge's credibility assessment. Nevertheless, having found an error in the Judge's consideration of the background evidence, that has an overlap with the Judge's failure to consider the risk factors.

18. For those reasons, the first ground is made out.

Ground 2

19. The Judge dealt with the Medical Report at [§26] to [§28] and [§32] of the Decision as follows:

> "26. The appellant further relies on a medical report from Dr Garwood. In this report he looks at the scar on the appellant's face and says that it 'is highly consistent with an ill treatment injury caused by a blow by a fist with

a ring on the finger. The morphology and colour does not permit an accurate dating of the scar and so a non-ill treatment cause cannot be excluded'.
27. Dr Garwood then dealt with the psychological injuries, by reference to the Istanbul Protocols of 2022. In the opinion section he says 'EXAMINATION REVEALED A PHYSICAL INJURY AND PSYCHOLOGICAL INJURIES THAT STRONGLY SUPPORT THE CLAIM TO HAVE SUFFERED ILL TREATMENT IN THE MANNER DESCRIBED'
28. The respondent takes issue with the expert report. In particular she highlights that the expert did not have sight of the appellant's GP records and based his assessment solely on the appellant's account. Reliance was placed on *HA (Sri Lanka)* [2022] UKUT 00111 and the fact that Dr Garwood gave no consideration to the possibility that the Appellant may very well be feigning or exaggerating symptoms in order to stay in the United Kingdom.
…
32. I also find that his account of the torture is not credible. He claims that the second detention was more severe than the first and that he was beaten on a number of occasions. Despite that, he only received one scar to his face. I place little (but not no) weight on the expert report as although reference is made to the Istanbul Protocols, no reference is made to the GP records or to the possibility that the appellant is exaggerating or making up his story. If his treatment was as bad as he says, I would expect more scars."

20. The Medical Report appears at [B/45-67]. Dr Garwood is a general practitioner albeit with psychotherapy experience. He makes clear at [B/66] that he bases his opinion only on interview with and examination of the Appellant. There is no reference to having reviewed the Appellant's GP records which might, for example, indicate whether the scarring could have come from some other incident and/or show whether and from what date the Appellant has complained about his mental health. The approach adopted in this respect is contrary to this Tribunal's guidance in HA and we accept that the Judge was entitled to take that into account when considering the weight to be given to the report. Allied to this, the doctor did not consider whether the Appellant might be feigning or exaggerating his symptoms which was also relevant to a consideration of his mental health problems. That too was relevant to weight to be given to the report.

21. We do not accept Ms Nnamani's categorisation of the Judge's findings as being an adverse credibility finding prior to consideration of the Medical Report. The first sentence of [§32] of the Decision is merely a summary of the finding followed by reasons for that finding. The overall finding in relation to credibility is at [§34] of the Decision.

22. We have regard to the reasons given by Judge Grey when granting permission as to the Judge's competence. We also take into account Ms Nnnamani's reference to [§109] to [§110] of IK where the Tribunal refers to torture by the Turkish authorities using methods which are "less detectable by physical manifestations". However, we make two points in this regard.

23. First, as Judge Thapar pointed out in the refusal of permission to appeal, the reliance on the Judge's own view of the scarring is only one reason for giving little weight to the Medical Report. There are reasons which, as we indicate above, are valid ones and are not affected by what the Judge says in the last sentence of [§32]. As Ms Lecointe pointed out, the doctor also accepts that there could be some other cause for the one scar on which reliance was placed.

24. Second, the Judge's comment and the doctor's conclusions have to be read alongside the Appellant's account of the causation of his physical injuries. That includes continuous knocking to the floor, beating, slapping, punching, banging his head on a desk and kicking (see [§11] to [§124] of the report at [B/48-55]). The Appellant only attributes the one scar which he bears to one particular hit which had caused his left eyebrow to bleed ([§39] at [B/49]). The doctor was clearly entitled to conclude as he did in relation to that one scar ([§125] to [§129] at [B/55]). Equally, however, the Judge was entitled to say that, based on the Appellant's account of the treatment inflicted on him one might have expected to see more scarring. We do not view that as going beyond the Judge's competence so much as assessing the medical evidence in light of the Appellant's own account.

25. Whilst what is said in IK might have relevance to some of the Appellant's account of his ill-treatment, he claims that much of that ill-treatment included violence which might be expected to give rise to physical injuries. Put another way, he did refer to some methods which might be said to be "less detectable" in terms of the treatment inflicted but much of his account does involve the use of violence. We do not accept therefore that a failure to have regard to IK in relation to the methods of ill-treatment, particularly absent express reliance on the guidance in that regard, amounts to a material error.

26. For those reasons, we do not find the second ground to be made out.

Ground 3

27. As we observe above, there is a significant degree of overlap between the first and second grounds and the third. The other two grounds are relied upon as impacting on the overall adverse credibility findings.

28. Ms Lecointe suggested to us that any failure to take into account the CPIN was not material as she said that the Appellant's overall credibility had to be the starting point. Whilst we accept that the Judge was entitled to rely on Section 8 considerations and inconsistencies in the Appellant's account ([§30] of the Decision), the overall credibility of a protection claim also has to be assessed against the background evidence for consistency or lack of it. That is part of an overall, holistic assessment. The error made as identified under the first ground may therefore affect the credibility finding and therefore the outcome of the appeal.

29. For those reasons, and although we have not accepted that the second ground taken alone is made out, having accepted that the first ground identifies an error and that the Judge's failure in this regard infects the overall credibility finding, we do not preserve the Judge's findings in relation to the Medical Report. It is necessary to set aside all of the findings in order for credibility properly to be assessed.

30. We add for completeness that we do not find any error in what is said by the Judge at [§33] of the Decision. The Judge was entitled to rely on the absence of evidence from the Appellant's sister regarding destruction of the Appellant's document. That is not a requirement for corroboration but a finding that less weight could be given to the Appellant's account as there would be evidence readily available to him which he had not produced to confirm that account. Again, however, we do not preserve that finding. Credibility will need to be considered based on all evidence before the Judge on the next occasion.

31. For those reasons, we accept that the third ground is made out when taken with the first ground.

CONCLUSION

32. For the reasons set out above, the Decision contains an error of law. We therefore set that aside in its entirety and remit the appeal to the First-tier Tribunal for a full de novo hearing.

NOTICE OF DECISION

The Decision of First-tier Tribunal Judge D Wright promulgated on 24 August 2024 involves the making of an error of law. We set aside the Decision in its entirety. We remit the appeal to the First-tier Tribunal for rehearing before a Judge other than Judge D Wright.

L K Smith
Upper Tribunal Judge Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber

31 January 2025