



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/04384/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 10 January 2018**

**Decision & Reasons Promulgated
On 30 January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**ANIL [K]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Collins of Counsel instructed by Sentinel Solicitors
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Turquet promulgated on 19 June 2017 dismissing the Appellant's appeal on protection grounds against a decision of the Respondent dated 26 April 2017.
2. The Appellant is a national of Turkey born on [] 1992. He arrived in the United Kingdom on 13 November 2016 and claimed asylum on arrival. He claimed that he had left Turkey three to four days earlier and had travelled across Europe before taking two flights to arrive in the UK. A screening interview was conducted on 13 November 2016 and a substantive asylum

interview was held on 6 April 2017. The Appellant's application for protection was refused for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 26 April 2017.

3. The Appellant appealed to the IAC.
4. The appeal was dismissed for reasons set out in the decision of First-tier Tribunal Judge Turquet promulgated on 19 June 2017.
5. The Appellant sought permission to appeal to the Upper Tribunal which was in the first instance refused by First-tier Tribunal Judge Landes on 26 September 2017. Permission to appeal was subsequently granted by Upper Tribunal Judge Rimington on 21 November 2017.
6. At the core of the challenge to the decision of the First-tier Tribunal is what Upper Tribunal Judge Rimington characterised as an arguable point that *"the judge misconstrued the screening interview which was central to her adverse credibility findings"*.
7. A copy of the screening interview is to be found at Annex A of the Respondent's bundle before the First-tier Tribunal. It is in standard format. It is relevant to note the following exchanges recorded in the document.

(i) At Part 2, 'Health/Special Needs', question 2.3, the Appellant was asked about his physical and/or mental health. He described himself as *"anxious"*.

(ii) Part 4 of the pro forma screening interview is headed 'Basis of asylum claim' and contains the following question or instruction: *"Please BRIEFLY explain ALL of the reasons why you cannot return to your home country?"*, with the following guidance then offered to the interviewing officer - *"Where applicable ask: What do you fear will happen to you on return to your home country? Who do you fear? Why do you fear them? When did this happen?"*. The answers are recorded in the interview in the following terms:

"They discriminate against my sect, Alevi. They broke my arm - 5 Turkish people. We were always ignored. You can't even get a job because they say you are Alevi not Muslim really, Kurdish, a terrorist, traitor."

The supplementary question is asked, *"When was arm broken?"*, to which the Appellant is recorded as having answered *"about 5 years ago"*.

(iii) Part 5 is headed 'Criminality and Security'. The Appellant answered to the question at 5.3, *"Have you ever, in any country, been accused of, or have committed an offence for which you have been, or could have been convicted? (including traffic offences)"* that he had been convicted of four

traffic offences and also been convicted four times “*for causing injury because I got into fights*”. The Appellant could not remember the dates of the fights. Under a sub-heading Offences it is written “*Racism/discrimination*” and details of a number of convictions are provided.

(iv) At question 5.4 the Appellant was asked, “*Have you ever been detained, either in the UK or any other country for any reason?*”. He answered “*Yes about a month before I came here. In Mersin, Mezitli police station. Detained for being Kurdish about 10 hours there.*”

(v) In response to question 5.5:

“Have you ever been involved with, or accused of being involved with any pro-government groups, political organisation, religious organisation, armed or violent organisation, group or party?”

the Appellant indicated with regard to ‘political organisation’, “*Yes, HDP (political). Youth branch*”.

(vi) In answer to question 5.7 in respect of whether he had ever been involved in, or suspected of involvement in terrorism, war crimes, crimes against humanity, genocide or human rights violations the Appellant answered “*No*”.

(vii) In concluding the interview, which finished at 00:20 hours, the Appellant was asked “*Is there anything you would like to add or change to your response?*”, to which he responded “*Not now because my mind is messed*”.

(viii) The Appellant declined to sign the screening interview record.

8. The courts have from time to time offered guidance as to the approach to be taken to screening interviews when evaluating the credibility of a claim on appeal. The following two extracts are informative.

(i) From **YL (rely on SEF) China [2004] UKIAT 00145** at paragraph 19:

“When a person seeks asylum in the United Kingdom he is usually made the subject of a screening interview. ...The purpose of that is to establish the general nature of the claimant’s case so that the Home Office official can decide how best to process it. It is concerned with the country of origin, means of travel, circumstances of arrival in the United Kingdom, preferred language and other matters that might help the Secretary of State understand the case. Asylum seekers are still expected to tell the truth and answers given in screening interviews can be compared fairly with answers given later. However, it has to be remembered that a screening interview is not done to establish in detail the reasons a person gives to support her claim for

asylum. It would not normally be appropriate for the Secretary of State to ask supplementary questions or to entertain elaborate answers and an inaccurate summary by an interviewing officer at that stage would be excusable. Further, the screening interview may well be conducted when the asylum seeker is tired after a long journey. These things have to be considered when any inconsistencies between the screening interview and the later case are evaluated."

(ii) From **KD (Sri Lanka) v Secretary of State for the Home Department [2007] EWCA Civ 1384** at paragraph 8:

"No authority is needed for the proposition that one seeking refugee status is not expected, when first arriving, fully to set out his claim to asylum, although asylum seekers are expected to tell the truth and discrepancies can legitimately be deployed in the assessment of credibility. ...But in the instant appeal the Immigration Judge was entitled to place weight upon the absence of any reference to detention and ill-treatment but one month before the appellant left Sri Lanka and the absence of any reference to the trigger for the series of events which were said to give rise to a well-founded fear of persecution in the future, namely, the discovery of weapons in a truck he had rented out."

9. At paragraph 30 of her Decision the First-tier Tribunal Judge identified the basis of the Appellant's claim advanced on appeal with reference to the submission made by the Appellant's Counsel:

"The basis of the Appellant's claim at the date of hearing as put by his Counsel ... was that he was a refugee owing to a well-founded fear of persecution by reason of his political opinion as a supporter of the HDP Party and that his risk was further aggravated by his ethnicity and faith as an Alevi Kurd".

10. It may be seen from the passages that I have quoted from the screening interview that the three elements identified in that core submission were referenced during the course of the screening interview. The Appellant referred to his involvement with the HDP at question 5.5, and also made reference to his status as an Alevi Kurd at various points throughout the screening interview. To that extent it may be seen that the core elements, albeit not necessarily articulated in any particular detail, were present within the screening interview.
11. The Judge said this in respect of the section of the screening interview requiring the Appellant to briefly explain all of the reasons why he could not return to Turkey:

"When asked in his Screening Interview at 4.1 why he could not return to his home country he said, "they discriminate against his Alevi sect. Five Turkish people broke his arm about five years ago."

They were always ignored. They could not even get a job because they said they were Alevi, not Muslim really Kurdish, a terrorist, traitor". There was no mention of being involved with HDP or of being detained whilst leafleting. In evidence he said that the answer at 4.1 was not the reason why he could not return. The reason he could not return was because he was Alevi and because of his activities in the HDP party." (paragraph 31).

12. At paragraph 39 the Judge said this:

"As stated above the Appellant did not mention involvement with the HDP in his Screening Interview".

13. In my judgement this quotation from paragraph 39 is plainly in error.

14. The Appellant did - as Mr Bramble very properly acknowledges on behalf of the Secretary of State - mention his involvement with the HDP in the screening interview. Although the Appellant did not make express reference to it at paragraph 4.1 - and to that extent the Judge was factually accurate at paragraph 31 - this does not 'save' the clear error at paragraph 39, or remove the overall impression that the Judge overlooked, or otherwise misconceived, a significant aspect of the screening interview. The Judge's misconception of fact was significant: the Appellant's case on appeal was articulated on the basis of his support for the HDP aggravated by his ethnicity and faith as an Alevi Kurd. The Judge clearly considered that the Appellant had failed to mention such support for the HDP from the outset. I find that I cannot be confident that the Judge's error has not informed and influenced the overall assessment of credibility. I concluded that this was a misconception of fact that amounted to an error of law, and that such error was material.

15. I acknowledge that absent this error, the Judge has otherwise set out with clarity other issues and concerns arising from the screening interview. For example, when asked about detentions at section 5.4 of the screening interview, the Appellant only related one incident of detention about a month previously when he was detained for ten hours; by contrast, during the substantive interview he referred to four detentions - in February 2016, in March 2016 when he was held for 24 hours, in August 2016 when he was held for ten hours (considerably more than just about a month prior to the screening interview), and a fourth incident at the end of August 2016 when the Appellant says he was taken by car and beaten before being allowed to go. The First-tier Tribunal Judge clearly thought that the discrepancies thus identified were indicative of a lack of credibility, and not simply explained by the Appellant simply lacking coherence in the interview. However, it seems to me that had the Judge correctly identified that the Appellant had mentioned the HDP, it *may* have resulted a different approach being taken to the contents of the screening interview. (Indeed, in due course the Judge who remakes the decision in the appeal will likely have to evaluate for himself the extent to which the

contents of the screening interview are to be seen as damagingly inconsistent, or merely lacking in coherent articulacy for some explicable reason - as has been argued on his behalf - such as the circumstances of the Appellant's arrival and his anxiety in the face of the screening interview.)

16. Moreover, I also acknowledge that there is considerable weight to other aspects of the Judge's assessment of credibility. For example: at paragraph 34 the Judge seemingly correctly identified that the attack mentioned at section 4.1 of the screening interview in which the Appellant claimed to have had his arm broken by five assailants five years previously, was not mentioned thereafter - although he did refer to an incident involving five men at a different point in time; indeed when the Appellant later referred to being beaten by five men in the course of his substantive interview and the appeal hearing, he was referring to much more recent events. Further, in my judgment, and contrary to one aspect of the grounds of appeal, the Judge sustainably identified at paragraph 36 a discrepancy in the Appellant's account as to the identities of those who had attacked him - a discrepancy not explained away by the Appellant claiming that he did not know their identities at the initial time but learnt them later. Yet further, at paragraph 37, it seems to me that the Judge has with some cogency identified an element of implausibility in the Appellant's account with regard to the reasons he has offered for why he was released rather than being made to serve a sentence having been supposedly convicted of involvement in PKK activities.
17. However, whilst these adverse evaluations are individually coherent, I bear in mind the 'in the round' approach necessary in asylum cases. For the reasons already given I find that I cannot assume that the Judge's significant misconception of fact has not in some way materially impacted upon the overall consideration of credibility. In consequence I conclude that the decision of the First-tier Tribunal must be set aside for error of law, and that it is not possible to preserve any findings of fact. Accordingly the decision in the appeal requires to be remade before the First-tier Tribunal.

Notice of Decision

18. The decision of the First-tier Tribunal contained a material error of law and is set aside.
19. The decision in the appeal is to be remade before the First-tier Tribunal by any Judge other than First-tier Tribunal Judge Turquet, with all issues at large.
20. No anonymity direction is sought or made.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.

Signed:

Date: **27 January 2018**

Deputy Upper Tribunal Judge I A Lewis