



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

Appeal Number: PA/02993/2017

THE IMMIGRATION ACTS

Heard at Field House

On 3rd August 2017

Decision & Reasons

Promulgated

On 7th August 2017

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**ME
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C MacKenzie of Counsel

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Mitchell promulgated on 10 May 2017, in which his appeal against the decision to refuse his protection and human rights claim dated 9 March 2017 was dismissed.
2. The Appellant is a national of Turkey, born on 10 September 1997, who claimed asylum on the same day that he was encountered at Heathrow

airport on 11 September 2016. He underwent an asylum screening interview on 12 September 2017 and a substantive interview on 16 February 2017.

3. The Respondent refused the application on 9 March 2017 on the basis that she did not accept that he was Kurdish as claimed; nor that he was politically active as part of the HDP or the PKK in Turkey; nor that he had ever come to the adverse attention of the authorities; nor that he would be at risk on return as a draft evader. As such, the Appellant was not at risk on return to Turkey, nor was he entitled to humanitarian protection and his removal would not breach Articles 2 or 3 of the European Convention on Human Rights. The application was also refused on private and family life grounds under and outside of the Immigration Rules.
4. Judge Mitchell dismissed the appeal in a decision promulgated on 10 May 2017 on all grounds. Although he accepted that the Appellant was Kurdish, adverse credibility findings were made against the Appellant whose claim was found to be fundamentally undermined by the significant inconsistencies in the Appellant's account. At the outset of the hearing, the Appellant's Counsel had accepted that the Appellant had not been called for military service and would not therefore be at risk as a draft evader and there were no submissions in relation to private and family life on behalf of the Appellant.

The appeal

5. The Appellant appeals on three grounds. First, that the decision contains two factual errors: incorrectly recording that the Appellant did not claim initially that he had been detained four times in Turkey (when this was submitted to the Respondent as a correction from the screening interview) and that there was evidence of adverse interest in his family who had links to the PKK. Secondly, that Judge Mitchell failed to consider relevant evidence or make findings on the evidence from the HDP about the Appellant's involvement with them and on his family profile with the PKK. Thirdly, that Judge Mitchell failed to give reasons as to why the information requested from the Appellant on the PKK was not credible, nor why he was not even considered to be a low level supporter.
6. Permission to appeal was granted by Judge Cruthers on 7 July 2017 on all grounds, the strongest of which was the first ground of challenge.

Findings and reasons

7. At the outset of the hearing, Mr Jarvis conceded that there was a material error of law specifically as to the factual errors identified in the first ground of challenge but likely on the remaining grounds as well. It was accepted that there was a tension in paragraph 18 of the decision as to the number of times the Appellant said he was detained in Turkey and the Judge failed to engage at all with the position of the Appellant's family members nor

consider expressly the findings in **IK (returnees - records - IFA) Turkey CG [2004] UKIAT 00312**, despite recording that it was still extant.

8. The concession was appropriately made by the Respondent for the following two primary reasons. First, in paragraph 18 of the decision, Judge Mitchell refers to the Appellant's screening interview and response that he had been detained in Turkey once, followed by reference to the letter of clarification on behalf of the Appellant that followed. It was stated in terms that 'the clarification letter does not mention any other detentions either', which is a factual error. The letter of 9 September 2017 states that the Appellant was detained in Turkey on four occasions because of his political affiliations and further stated that he was fingerprinted and photographed by the Turkish authorities on each occasion that he was detained (confirming there was more than one). This factual error is a material error of law as it was relied upon as an inconsistency in the Appellant's claim which undermined his credibility.
9. Secondly, in paragraph 30 of the decision, it is recorded that the Appellant's family and his father have been able to remain in Turkey with no problems, prosecutions, detentions or arrests. This is contrary to the evidence before the First-tier Tribunal, both documentary and as part of the witness evidence, that family members had been charged and imprisoned in Turkey and that the family had been visited by the authorities searching for the Appellant. This factual error is also a material error of law as it is relied upon as one of the reasons for dismissing the appeal.
10. It is sufficient to allow the appeal for these reasons alone, which have been expressly conceded by the Respondent, and find that the decision of the First-tier Tribunal involved the making of a material error of law by relying on factual errors forming key parts of the reasoning for the appeal being dismissed. It is not possible to conclude that if these factual errors were not made that the appeal would still have inevitably been dismissed.
11. I also allow the appeal on the second ground of challenge. There is a material error of law in the Judge's failure to refer to or make any findings about the evidence from the HDP and, linked to the factual error above, a failure to engage at all with the Appellant's family's links to the PKK and the evidence of the adverse attention they have received from the Turkish authorities for this reason. The third ground of challenge as to the failure to give reasons adds little of substance to the appeal which has been allowed for the reasons already given.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal and remit the appeal to the First-tier Tribunal for a de novo hearing.

Directions to the parties

1. This appeal is remitted to the First-tier Tribunal for a de novo hearing of the appeal.
2. Any further evidence relied upon shall be filed with the First-tier Tribunal and served upon the other party no later than 14 days prior to the hearing of the remitted appeals.
3. The Appellant is to file with the First-tier Tribunal and serve upon the Respondent no later than 14 days prior to the hearing of the remitted appeal a skeleton argument setting out relevant issues, with reference to evidence and case-law.
4. The First-tier Tribunal may issue further directions as required.

Directions to administration

1. The appeal is remitted and shall be heard at the Taylor House hearing centre on a date to be fixed by that centre.
2. The remitted appeal is to be listed before any Judge except Judge Mitchell.
3. There is a time estimate of 2 hours for the hearing.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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

Signed 
August 2017

Date: 4th

Upper Tribunal Judge Jackson