



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00018/2018

THE IMMIGRATION ACTS

Heard at Field House
On 16 May 2018

Decision and Reasons Promulgated
On 23 July 2018

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

MR DY
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Degirmenci, Counsel
For the Respondent: Mr Bramble

DECISION AND REASONS

1. The appellant is a citizen of Turkey born in 1984. He appealed against a decision of the respondent made on 19 December 2017 to refuse his claim for asylum.
2. The basis of the claim is that he would be at risk from the authorities because he is a Kurdish Alevi and because of his political activities in support of the Halkların Demokratik Partisi (HDP) who are a proscribed group. A cousin had been killed by the government in 2015. Because of her activities he had been labelled a terrorist. He had been arrested twice but was released after a few days the second time when he agreed to be an informer for the government.
3. After the second release he fled Turkey.

4. It was accepted that he is a Kurd and an Alevi. It was not accepted that he would be at risk on return on the basis of his ethnicity and religion. His claims of involvement with the HDP and his problems at the hands of the authorities were not believed.
5. He appealed.

First-Tier Hearing

6. Following a hearing at Hatton Cross on 31 January 2018 Judge of the First-tier Telford dismissed the appeal. He did not believe the appellant had been politically active for the HDP or that he had been detained and ill-treated by the authorities.

Error of Law Hearing

7. The appellant sought permission to appeal which was granted on 14 March 2018. At the error of law hearing Mr Bramble adopted the Rule 24 response which accepted that the decision could not stand and the case had to be heard again.
8. In light of the agreement, with which I concurred, it suffices to deal only with the first of the seven grounds raised, namely failure to clearly determine the appellant's appeal by both dismissing and allowing the appeal.
9. In his conclusions the judge "*found the evidence on the core issues credible. Taken as a whole and applying anxious scrutiny to each element relied upon both individually and collectively I remain of the view that this is a case where there is a real risk of harm for a Convention reason*" (para 46).
10. He then contradicted this at [47] by stating that the claim is "*not shown to be credible and is not shown to be based on the appellant's perceived political views, his religion, his ethnicity*" and (at [48]) "*I reach this conclusion because the evidence was incredible*" and thus (at [49]) "*the appellant is not a refugee*" which he repeats at [50].
11. Under the heading "human rights" he once again states the appellant was "*not credible in his evidence*" such that the claims "*fall to be dismissed*" [52].
12. Under "Decision", however, he states "*Appeal allowed on asylum grounds*" before going on to state "*I have dismissed the appeal and make no fee award*".
13. These matters go beyond mere typing errors which can be rectified. It is apparent that the judge has conflated the findings of two or more different cases leading to these contradictory decisions in the determination.
14. In that regard, throughout the determination the judge referred to evidence which did not relate to the appellant's appeal. Examples are his reference to expert witness evidence which does not relate to the appellant's case [12 and 44]; a reference to a screening interview [16], a document which was not produced by the respondent in her bundle; reference to the appellant having travelled on his own passport, he having always said that he travelled with a passport provided by an agent [23]; reference to

the appellant claiming asylum upon discovery by the authorities [21], whereas the evidence before the Tribunal by the respondent was that the appellant presented himself to an immigration officer on arrival.

15. Further, at [10] the judge stated that whether the appellant would be afforded state protection and whether internal relocation was available was “*an issue*” at the appeal, having stated (at [3] and [44]) that these were not live issues at the appeal.
16. I agreed with both parties that the conflation and contradictions must infect the entirety of the decision. They render the decision unclear, unreliable and therefore unsafe. There is a clear error of law. The judge has failed to display the anxious scrutiny claimed (at [46]), such that the case must be reheard.

Notice of Decision

17. The decision of the First-tier Tribunal is set aside. None of its findings are to stand. The nature of the case is such that it is appropriate in terms of section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and of Practice Statement 7.2 to remit the case to the First-tier Tribunal for an entirely fresh hearing. The member(s) of the Tribunal chosen to consider the case are not to include Judge Telford.

Direction Regarding Anonymity

18. 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 members of his 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

Date 19 July 2018

Upper Tribunal Judge Conway