



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

Appeal Number: PA/05007/2017

**THE IMMIGRATION ACTS**

**Heard at the Rolls Building**

**On 20 February 2018**

**Decision &  
Promulgated**

**On 26 February 2018**

**Reasons**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**H K  
(ANONYMITY DIRECTION MADE)**

**and**

Appellant

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms G Kiai, instructed by Montague Solicitors LLP

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Colvin promulgated on 2 November 2017 in which she dismissed the appellant's appeal against a decision of the respondent made on 11 May 2017 to refuse to grant asylum and/or humanitarian protection
2. The appellant is a Turkish citizen. His case is that he is an Alevi Muslim Kurd, and a supporter of HDP, as is his father. He has been arrested on three separate occasions between March 2014 and October 2016. He was

tortured and ill-treated in detention and was accused of supported the PKK; he was also asked to be an informer. After his third detention, his family made arrangements for him to be brought via Italy to the United Kingdom where he claimed asylum on arrival. He fears further persecution on return for the same reasons and also that he would be compelled to undergo military service.

3. The respondent accepted the appellant's religion, ethnicity and nationality, but rejected the rest of his claim, noting that it was open to him to buy himself out of military service.
4. The judge considered that the central issue was the appellant's credibility and in her decision at [21] addressed that, concluding at [23] that appellant had omitted to give details of what now formed the core of his claim. She noted also [24] that the appellant had been inconsistent about his ability to buy himself out of military service and as to his liability to undertake service. She also drew inferences adverse to credibility from his failure to claim asylum in Italy [25].
5. I am satisfied that, as is set out in the grounds of appeal, the judge erred in her approach to credibility in two ways. First, there is no finding as to whether the appellant was a vulnerable witness, given that he claimed to have been the victim of torture, and to be suffering mental health problems as a result. It was incumbent on the judge, following the Presidential Practice Direction as set out in AM (Afghanistan) [2017] EWCA 1123, for her to have done so. I do not accept the submission that this would not have made a difference.
6. Further, the judge appears not to have applied the principles set out in YL (China) [2004] UKIAT 00145 in her approach to the screening interview, failing to note that it was carried out at 1 am, and it is notable that the respondent does not in the refusal letter take points on failure to disclose details of the claim earlier. The judge did not take proper account of the reasons for those failures set out in the substantive interview.
7. While Mr Avery submitted that there were other reasons justifying the adverse credibility finding, I consider that these are also undermined by the failure to address the issue of vulnerability, and it is unclear why the judge drew inferences from a failure to provide evidence [25], nor is it clear why she thought it reasonable to have obtained medical evidence from Turkey [26] or why she rejected the explanation for not claiming asylum in Italy.
8. While it could be said that the findings with respect to liability to military service are made out, those are insufficient to explain why the rest of the claim which is not credible, given that these are discreet issues.
9. I find also that the judge failed, in fact, to make any findings of fact but simply rejected the claim [28]. That is not a sufficient basis on which to make an assessment of future risk, and there is no evidence that the

judge, as Ms Kiai submitted, took the background evidence about how the Turkish authorities customarily behave towards suspected PKK supporters.

10. The judge also failed to consider IK (returnees, records, IFA) [2004] UKIAT 312 or to apply it to facts as found. While I note Mr Avery's submission that on the facts as found, there was no material error, for the reasons set out above, the fact-finding was defective. Further, there were no findings on many of the issues such as family connections with the PKK, there being a tacit acceptance that family members had been recognised as refugees.
11. For all of these reasons, I am satisfied that the decision of the First-tier Tribunal involved the making of an error of law, and I set it aside. As the judge failed to make any proper findings, the only course of action properly open to me is to remit the appeal to the First-tier Tribunal for a

### **Notice of Decision**

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. The appeal is remitted to the First-tier Tribunal for a fresh decision on all issues.
3. The appeal must not be before First-tier Tribunal Judge Colvin.

### **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 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 20 February 2018



Upper Tribunal Judge Rintoul