



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: PA/08256/2017

THE IMMIGRATION ACT

Heard at Field House

Decision & Reasons Promulgated

On 8th February 2018

On 23rd February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

HK

(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Karim of Silvine Solicitors

For the Respondent: Ms Isherwood Senior Home Officer Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Griffith promulgated on the 11th October 2017 whereby the judge dismissed the appellant's appeal against the decision of the Respondent to refuse his protection claim on the grounds of asylum, humanitarian protection and Articles 2 and 3 of the ECHR.
2. I have considered whether or not it is appropriate to make an anonymity direction. Taking that and all of the circumstances into account I consider it appropriate to make an anonymity direction.
3. Leave to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Page on 28 November 2017. Thus the case appeared before me to determine whether or not there was a material error of law in the decision.

Factual background

4. The appellant is a national of Turkey. The appellant applied for a visit visa on 23 December 2010. That was issued and he was given leave to enter the United Kingdom for 6 months. The appellant came to the United Kingdom. On 1 July 2011 he submitted an application for leave to remain as an individual that had established himself in business in the UK. That application was refused and his appeal against the decision was dismissed on 30 September 2011. There is in the documentation a copy of the decision in respect of that appeal. The appellant remained in the United Kingdom. There is reference in the papers to the fact that the appellant for a short time was in a relationship but that quickly broke up and there has been no suggestion of any other significant relationship.
5. On 3 February 2017 the appellant was served with a notice notifying him of his liability to be removed as an overstayer. The appellant then claimed asylum on 7 February 2017. By decision made on 8 August 2017 the respondent refused the appellant's asylum claim.
6. The factual basis for the appellants claim is set out as referred to by the judge in his screening interview, his substantive interview and his witness statements. Whilst the appellant had given the background of discrimination by reason of the fact that he was an Alevi Muslim, the basis of his case as acknowledged in the decision was that he had been critical of President Erdogan on Facebook and that otherwise he had a brother who was a member of the MLKP. The appellant claimed by reason of the Facebook postings and by reason of his association with his brother he would be at risk on return to Turkey.
7. An expert report had been obtained and background materials to support the appellant's claim that he would be at risk on return to Turkey.
8. The appellant's representative in making submissions raised in principle 3 separate issues: -
 - i) the issue of the Facebook posts by the appellant and whether the judge had properly considered those in assessing whether or not the appellant would be at risk.
 - ii) the experts report: the fact that the judge has suggested that the report is contradictory when it is not and that otherwise the judge has failed to properly consider and given valid reasons for not following the report. The judge has given little weight to the report and failed to take account of its conclusions.
 - iii) the objective material: the failure of the judge to properly take the objective material into account or failing to give reasons for not following the objective material.
9. The grounds of appeal themselves had commenced by claiming that the judge had misdirected himself at the beginning of the decision, paragraphs 4-10 of the decision, with regard to the appellant's claim. It is clear from paragraph 5 that the judge was concentrating upon the central core of the appellant's claim, which was that he had been critical of President Erdogan online, specifically Facebook, and as a result would be at risk on return having received warnings and threats on Facebook. There is reference thereafter to the fact that the appellant had a brother, who is a member of a political party opposed to the regime in Turkey. In effect those were

material factors giving rise to a risk to the appellant. The materials otherwise set out in the identified paragraphs are matters that are clearly raised within the refusal letter and the judge was perfectly entitled to set out the background as recited in the refusal letter.

10. Central therefore to the appellant's claim was the issue of his posts on Facebook. It was the posts on Facebook that were the basis for the conclusions within the expert's report and for references and reliance being placed upon the background material.
11. I note that within paragraph 41 of the Judge's decision that the experts report, which was dated 27 September 2017, was sent to the Tribunal by the appellant solicitors on 29 September 2017, that is after the date of the hearing. I also note that the expert refers in his report to the appellant's account being credible. Whilst I would say that it is not for an expert to decide whether an appellant's account is credible, in the context in which it appears it is suggesting that the appellant's view that Turkey has substantially and significantly changed since he left the country is consistent with the background information. Finally the expert not only commented upon the impact of the Facebook posts by the appellant but was responsible for translating the posts. No issue has been taken with regard to the issues.
12. Issue was taken with the fact that whilst the expert refers to the questions that have been posed to him having been set out "in turn", in fact they do not appear in his report. Issue was also taken with the fact that the expert points indicates that he can argue various issues. The respondent's representative indicated that that was not an approach that the expert should take. It was not for an expert to become an advocate for a specific view.
13. The judge has noted that the appellant himself had never been involved in politics whether in Turkey or in the UK. The extent of the appellant's political activity or involvement has been confined to reposting material critical of President Erdogan on Facebook. The judge had noted that the appellant had referred in interview to postings referring to 2004 -2005 but, as the judge noted, that appear to be a mistake as the appellant was still in Turkey at the time and there was no other reference to any Facebook entries around that time.
14. The Facebook posts in question appear at pages 11, 12 and 13 of the appellant's bundle. The appellant's representative with regard to the Facebook post commenced his submissions with consideration of paragraph 39 of the decision. The paragraph commences by setting out that a number of postings from pages 6 to 10 of the appellant's bundle, which appear not to have been translated; upon which the expert expresses no opinion, if he saw them; and the judge as they were run translated and were not explained by the expert gave no weight.
15. The experts report appears to have limited himself to 3 pages. At page 11 is a picture in which the face of President Erdogan has been superimposed over a picture ostensibly identifiable as Osama bin Laden. The expert merely states that the appellant has "*shared a post resembling Mr Erdogan to terrorist Bin Ladin*". The caption below has not been interpreted and the judge has made a note of such. The post appears to have elicited a response, although where exactly the expert translates the response is not

entirely clear. The judge has noted that the response was '*make your life miserable*' effectively if he, the appellant, came to Turkey. As the judge notes there is nothing to suggest where the person making the comment is or has any connection with the authorities in Turkey or with the President. There is no indication that the comments emanate from any of the authorities in Turkey.

16. There are 2 further posts commented upon within the expert's report. The further posts had also elicited responses as noted by the judge. The appellant's representative was seeking to argue that the responses contained explicit and implicit threats and the First-tier Tribunal judge had failed to recognise such. By comparison it was submitted that the expert had concentrated upon the posts and the impact that the posts would have. The expert by reference to other background material had suggested that the post would expose the appellant to a risk on return to Turkey. There are a number of factors which have to be considered. Some of the examples relied upon involve individuals with high profiles outside of Turkey, who have been critical of the Turkish regime in the press in a very public way outside the country, the example being the high-profile journalist in Spain. Others involved individuals inside the country who have been involved in Facebook posting remarks about the president and the government. For example at page 22 of the appellant's bundle there is reference to the arrest of a teenager for insulting the president on Facebook but it appears that the use of social media was in Turkey. It would be interesting to see if the Turkish authorities are monitoring all Facebook posts throughout the world.
17. With regard to the 2 Facebook pages at 12 and 13 there is clearly a threat but the source of the threat is unclear.
18. With regard to the Facebook pages otherwise the judge has pointed out that of the 3 extracts none are dated, there is no response to one of them, the captions are untranslated without any copy of any response being shown in the final extract. One of the postings said to be insulting of the President and the AKP the party the source for the person responses unidentified. It would be a significant leap to suggest that the post had emanated from anyone connected with the authorities in Turkey or otherwise for them to be anything other than an individual responding to a post to which they object.
19. It is suggested that the judge has wrongly concluded that there was inconsistencies in the report of Dr Demir. The point being made by the judge is, paragraph 42, that whilst the experts suggest that there was no offence attributable to the appellant in the sharing of the Facebook posts, still the appellant 'the expert can argue' would be at risk. The expert appears more to be becoming an advocate rather than merely an expert. The judge was also making the point that some of the examples referred to by the expert involved individuals that were arrested for other offences as well as allegations of having insulted the President. The judge was making the point whilst the expert seem to be suggesting that the appellant would not have committed any offence and would therefore not have been liable to arrest, but subsequently the appellant would still be at risk because of the postings.
20. It is in that context that the judge has given the expert's report. The judge has pointed out that there was no attempt to compare the contents of the 3

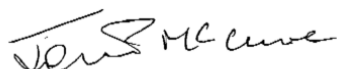
posts relied on by the appellant and whether they were similar or comparable to the post that resulted in individuals being arrested. No comment has been made otherwise as to the appellant's lack of political profile. The judge has considered the nature of the posts and the nature of the responses received. In the circumstances the judge has given valid reasons for concluding that on the basis of the evidence it had not been proved that the Facebook postings would expose the appellant to a risk on return to Turkey.

21. In coming to that assessment the judge has considered both the expert report and the background material relied upon to show that individuals that posted such matters were subject to arrest. In the circumstances the judge has given valid reasons for concluding that the post themselves would not expose the appellant to any risk on return to Turkey. The judge has also given valid reason for limiting the weight that he gave to the experts report pointing out that the expert had become an advocate, appeared to be giving contradictory conclusions, failed to note the differences between the appellant's factual circumstances and those in the background material.
22. In those circumstances the judge was entitled to conclude that the Facebook posts would not expose the appellant to any risk on return to Turkey. On the basis of the evidence presented the judge was entitled to come to the conclusion that he did.
23. In the light of the matters set out the judge has not made a material error of law.

Notice of Decision

24. I dismiss the appeal.
25. I make an anonymity direction

Signed

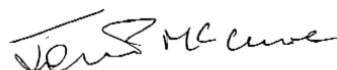


Date 20th February 2018

Deputy Upper Tribunal Judge McClure

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 the appellant or any member of the appellant's family. This direction applies both to the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings



Signed

Date 20th February 2018

Deputy Upper Tribunal Judge McClure