



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

Appeal Number: PA/11913/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 18 January 2019**

**Decision & Reasons
Promulgated
On 20 February 2019**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**YUNUS [B]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs S Panaciotopolou, Counsel instructed by Montague Solicitors LLP

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant, a national of Turkey, has permission to challenge the decision of Judge Paul of the First-tier Tribunal (FtT) sent on 21 November 2018 dismissing his appeal against the decision made by the respondent on 26 September 2018 refusing to grant protection.
2. The grounds assail the judge's treatment of the issue of the credibility of the appellant's account. Having noted that it was accepted by the

respondent that the appellant was a member of the HDP (paragraph 5), the judge set out his conclusions and reasons at paragraphs 20-23 as follows:

- “20. The core issue in this case relates to the appellant’s credibility as to his assertion that he has been detained on 2 occasions. In assessing the credibility, I have to have regard to such independent and/or collateral evidence that might or might not be available. I find the fact that the appellant’s brother was at the hearing but was not able or willing to give evidence, utterly incredible. Here was a close member of the family who would have been able to give direct evidence as to what his brother experienced as the result of what he had been told over the years. Whilst, on the one hand, perhaps it could be said that that is evidence in itself that was not independent but the mere fact that the appellant’s brother was not available for cross-examination on this, in my view, is highly significant.
21. Similarly, there is another brother who was apparently involved in similar political activities to the appellant, but whose whereabouts is completely unknown. This is in my view incredible. Close family ties would normally be expected to be maintained, and in my view the fact that the appellant is unprepared to disclose this brother’s whereabouts is further reflection on the weakness of his case.
22. The next thing I find of concern is that the appellant was contending that, notwithstanding he had been out of the country since October 2017, it was only 3-4 days ago that his parents had told him that the home had been raided. If he was due to inform or report on a regular basis, then the authorities would have come looking for him well before now. The fact that he was relying on his parents to say that 3-4 days previously they had raided the home looking for him, in my view, was as Ms John observed and attempt to embellish the claim.
23. I have considered the objective material provided by the appellant’s representative, including the Country Information Guidance report for the HTP, as well as generic reports from Amnesty International, Human Rights Watch, and the United Nations report. The political situation in Turkey is dire. The current President clearly has any potential member of the opposition within his sight. Furthermore, as the Country Information Guidance report in relation to the HTP shows, it has been the victim of concerted attempts by the authorities who undermine its attempt to claim democratic legitimacy. I have also had regard to the other Country Guidance case of **IK (Returnees’ records - IFA) Turkey CG** [2004] 0312. The risk factors there depend, in the first instance, upon the appellant being able to give a credible account as to arrest and detention, and any related ill-treatment. In my view, the appellant had not demonstrated this in his case. I consider his account to be generic and formulaic. And most importantly, it is not supported, by any corroborative evidence from family members.”

3. The grounds contend that these conclusions were defective because they wholly failed to analyse or evaluate the appellant's evidence about having been arrested twice in July 2015 and August 2017 or more generally to assess the quality of the appellant's account as set out in his lengthy asylum interview. It was submitted that the judge failed to address the current situation in Turkey.
4. I heard a well-presented submission from Mrs Panaciotopolou at the end of which Mr Tarlow said that he no longer wished to defend the judge's decision.
5. In my judgment Mr Tarlow was realistic not to pursue the respondent's defence of the judge's decision in this appeal.
6. That is not to say I agree with every ground. As regards the contention in the grounds that the judge ignored the background country information, that is belied by paragraph 23 and if the judge's adverse credibility findings had been sound, then it could not have been said, dire as the situation in Turkey may be for Kurdish activists, that the judge erred in dismissing his appeal.
7. Clearly, however, that depends on whether his adverse credibility findings are sound.
8. Why I have concluded they are not sound is principally neither in paragraphs 20-23 or elsewhere does the judge engage adequately with the factual matrix of the appellant's claim. In particular, there is no assessment of whether the account given by the appellant in his asylum interview was internally or externally consistent, sufficiently detailed and plausible or not. There is no engagement with the respondent's reasons for finding the appellant not credible or with the appellant's evidence at the hearing about his past experiences in Turkey.
9. Potentially the (only) two reasons given by the judge in these paragraphs for rejecting credibility (the unexplained failure of the brother to give evidence; the appellant's reliance on last-minute information from his parents about a raid on his parents' home in Turkey three or four days ago) were capable of significantly affecting the outcome of a credibility assessment. Without any consideration of whether the appellant's claims about his past experiences in Turkey or analysis of their relevant weight, it cannot be said that the judge carried out a rounded or holistic assessment of the evidence.
10. For the above reasons I set aside the decision of the judge for material error of law.
11. The crux of the challenge being to credibility, I see no alternative to the case being remitted to the FtT (not before Judge Paul).

Directions

12. In view of the uncertainty surrounding the appellant's brother and whether he was prepared or not to give evidence at the FtT hearing, I direct that:

- (1) the appellant's representatives produce by end of February 2019, with a copy to the respondent, a witness statement from the brother (i) detailing his own immigration history and (ii) stating whether, and if so on what basis, he supports his brother's asylum claim; and (iii) stating whether he (the brother) has any medical problems and if so producing independent evidence of the same.

In the same response the appellant's representatives are to state whether or not they intend to call him (the brother) to give evidence at the new hearing.

13. To conclude:

The decision of the FtT Judge is set aside for material error of law.

The case is remitted to the FtT (not before Judge Paul) with Directions as above.

No anonymity direction is made.

Signed

Date: 19 February 2019



Dr H H Storey
Judge of the Upper Tribunal