



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

Appeal Number: PA/12121/2018

THE IMMIGRATION ACTS

**Heard at Bradford
On 10 July 2019**

**Decision & Reasons Promulgated
On 09 August 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**M Y
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Sills, instructed by Howe & Co. solicitors

For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. By a decision which I promulgated on 30 May 2019, I found that the First-tier Tribunal had erred in law such that its decision fell to be set aside. My reasons were as follows:

“1. The appellant was born in 1994 and is a male citizen of Turkey. Travelling via Greece, he arrived in the United Kingdom in January 2018. By a decision dated 11 October 2018, the Secretary of State refused his application for international protection. He appealed to the First-tier Tribunal which, in a decision promulgated on 8 January 2019, dismissed his appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. I find that the judge has erred in law such that her decision falls to be set aside. However, I find that many of the findings of fact reached by the judge should stand. In my view, Ground 2 is made out. This ground records that at [26] the judge accepted that the appellant had attended a Gulen school at primary and secondary level. The judge wrote that, 'the appellant certainly demonstrated during his interview quite a lot of knowledge about the Gulen movement and this is understandable because the appellant said he attended primary and secondary school run by the Gulen movement but I find that he has provided no credible evidence that satisfies me that he was an active member of the Gulen movement, then he is a political profile in Turkey which would have brought him to the attention of the Turkish authorities.' [my emphasis]. Mr Diwnycz, who appeared for the Secretary of State before the Upper Tribunal, acknowledged that the judge had not considered whether the appellant faced a real risk on return to Turkey on account of such involvement with the Gulen movement which the judge accepted had occurred. What is not entirely clear from the decision is whether or not the judge accepted that the appellant, in addition to attending a Gulen school or schools, had subsequently become further involved working for the Gulen movement. Given that there is no clear finding either way, that aspect of the claim may be re-examined at the resumed hearing before the Upper Tribunal.

3. The remaining grounds have little, if any, merit. Ground 1 complains that that the determination of the First-tier Tribunal is invalid because it has not been dated or signed. Wisely, Mrs Choudhry, who appeared for the appellant before the Upper Tribunal, did not pursue this ground. The First-tier Tribunal has produced a decision in writing as is required to do. The decision has not been invalidated in any way, as the ground suggests. Ground 3 deals with the judge's finding regarding an application ('Bylock') relating to Gulen political activity which the appellant claims he had on his mobile phone and which he asserts the Turkish authorities would become aware of my making a 'search of the Internet.' I wholly agree with the judge who found at [29] that 'the appellant has provided no evidence that the authorities and access to his personal phone to ascertain that he had the Bylock application on his phone.' The appellant has failed to discharge the burden of proving that, without access to his mobile telephone, the authorities would be able to discover that the appellant was using the application simply by searching the Internet. Ground 5 complains that the judge at [37] wrongly assumed that, because the appellant had been sent to a Gulen movement school, his parents must inevitably have supported the movement. The resumed hearing before the Upper Tribunal will be concerned only with (i) determining whether as a fact the appellant worked for the Gulen movement following his schooling and (ii) whether his involvement through schooling or otherwise with the movement would expose into a real risk on return to Turkey. The judge's findings regarding the parents are not relevant to the determination of that issue. In any event, I find that the finding was available to the judge and did not, in the context of all the evidence, amount to speculation on her part. Ground 6 also has no merit. This ground asserts that the judge erred in law by concluding that the appellant had lied the United Kingdom authorities because he did not claim asylum in Greece. The judge did not err by concluding that the

appellant's credibility was damaged by his failure to claim asylum in Greece, through which he travelled en route to the United Kingdom and which was a country which would have provided him with the means to claim international protection. That finding and the damage it has upon the appellant's credibility as a witness shall stand.

Notice of Decision

The decision of the First-tier Tribunal promulgated on 8 January 2019 is set aside. All the findings of fact shall stand. The following issues will be considered at a resumed hearing by the Upper Tribunal (2 hours; Upper Tribunal Judge Lane; Turkish interpreter) : (i) did the appellant work for the Gulen movement following the conclusion of his schooling and; (ii) is it reasonably likely that the appellant's involvement through schooling or otherwise with the Gulen movement will expose him to a real risk of persecution or Article 3 ECHR ill-treatment on return to Turkey. Both parties may rely upon fresh evidence provided copies of any documentary evidence (including witness statements) are sent to the Upper Tribunal and the other party the less than 10 days prior to the resumed hearing."

2. I shall continue to refer to the appellant as a supporter of the Gulen Movement rather than by any other designation. The Turkish authorities hold the U.S.-based cleric, Fethullah Gulen, responsible for the failed coup of July 2016. Both parties accept that the Turkish authorities seek to question and detain those whom they consider may be followers of the Gulen Movement and that the prison conditions in which such detainees may be held are likely to infringe Article 3 ECHR.
3. At the resumed hearing at Bradford on 10 July 2019, I was alarmed to note that the appellant's solicitors had filed and served a supplementary bundle of documents which purported to deal almost exclusively with the question of the 'Bylock' telephone application which I had specifically excluded from consideration at the resumed hearing in my error of law decision. Moreover, Mr Sills, who appeared for the appellant at the resumed hearing, did not have a copy of my error of law decision in his brief. In that decision, I attempted to narrow the issues to be determined before the Upper Tribunal at the resumed hearing but my directions appear to have been wholly ignored by the appellant's solicitors. I told Mr Sills that I intended only to consider those matters detailed in the error of law decision and would not revisit the question of the telephone application.
4. I heard evidence from the appellant who spoke in Turkish with the assistance of an interpreter. He explained that, as a senior student, he had been responsible for younger students in university accommodation. He carried out a pastoral role for these students, which included giving them information regarding the Gulen Movement. Briefly cross-examined by Mrs Pettersen, who appeared for the Secretary of State, the appellant confirmed that an arrest warrant had been issued against him that he had continued to follow the Gulen Movement *sur place* after arriving in the United Kingdom. In addition, the appellant claims that he is himself mentioned in documents relating to the arrest of his sister who both

parties accept has been imprisoned on account of her involvement in the Gulen Movement.

5. The problem in this case lies in the fact that the First-tier Tribunal has correctly, for the reasons identified in my error of law decision, disbelieved the appellant's evidence regarding the 'Bylock' telephone application. It was the appellant's claim that use of this application had exposed him to the Turkish authorities as a supporter of the Gulen Movement. The appellant relies on those documents, in turn, to show that the Turkish authorities have expressed an interest in his political activities in the past. However, Mrs Pettersen did not submit that I should wholly exclude the documents as unreliable evidence.
6. I remain unpersuaded by the claim that the Turkish authorities would be aware that the appellant was using a particular telephone application if they did not have physical possession of the appellant's telephone. The evidential value of the documents referring to the telephone application must, by any evaluation, be diminished accordingly. Having said that, I am persuaded that, whether or not the Turkish authorities have issued an arrest warrant for this appellant, he remains at real risk of ill-treatment should he return to Turkey.
7. My reasons for reaching that finding as follows. The respondent accepts that the appellant is a supporter of Gulen Movement and, very significantly, that the appellant's sister, also a supporter, has been imprisoned. The question in this appeal is whether the Turkish authorities would become aware of the appellant's involvement in the Gulen Movement (assuming that they have not issued a warrant for his arrest hitherto) and, if they became aware, how they would act on such knowledge. Background country materials, including the CPIN for February 2018, provide numerous instances of the anxious response of the Turkish authorities to supporters of the Gulen Movement which those authorities hold responsible for a major, if failed, coup attempt in 2016. It would, perhaps, be appropriate to use the expression 'hair trigger' to characterise the nature of that response. Furthermore, as is clear from evidence in Turkish appeals before United Kingdom immigration tribunals over a number of years, Turkey operates a records and surveillance system which is highly sophisticated. The appellant submits that, even if no warrant has been issued for his own arrest, that system is capable of linking him to his imprisoned, Gulenist sister. I find that the background material supports such an assertion. Moreover, the appellant has been involved with the Gulen Movement for many years, attending Gulenist schools and college. I consider that it is reasonably likely that some trace of his involvement with the Gulen Movement whilst he has been living in Turkey has been recorded by the Turkish authorities. On the basis that it has been recorded, I find it also reasonably likely that such information may be readily retrieved by the Turkish authorities when the appellant re-enters the country.

8. The question then arises as to how, if they are aware that the appellant is of supporter of the Gulen Movement, the Turkish authorities will react to that knowledge. I note that as many as 50,000 individuals have been detained following the failed coup attempt; that it would not take a great deal for the authorities to add to that number by arresting the appellant and detaining him is not, in that context, implausible. The CPIN at 8.2.4 records that the IRIN (Integrated Regional Information Networks, a news agency formerly linked to the UN) had reported that 'normally, arrests are only done when they're needed, but now they arrest first and ask questions later...' There is no evidence to show that the anxiety of the Turkish authorities has lessened with the passage of time since the coup attempt and it would be into such circumstances that the appellant would return.
9. There is an additional consideration. Neither party doubts the commitment of this appellant to the Gulen Movement. As Mr Sills submitted, if he did return to Turkey, then the appellant would only refrain from continuing his Gulen Movement activities out of fear of being persecuted (see *HJ (Iran)* [2010] UKSC 31). I accept that submission and agree that the appellant is entitled to refugee status on this discreet ground irrespective of any problems he may face upon entry to Turkey.
10. In the circumstances, I allow the appellant's appeal on asylum and human rights (Article 3 ECHR) grounds.

Notice of Decision

I have remade the decision. The appellant's appeal against the decision of the Secretary of State dated 11 October 2018 is allowed on asylum and human rights (Article 3 ECHR) grounds.

Signed

Date 20 July 2019

Upper Tribunal Judge Lane

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

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