



Upper Tribunal

**(Immigration and Asylum Chamber) Appeal Number: IA/01193/2020 (V)
[PA/51541/2020]**

THE IMMIGRATION ACTS

**Heard by way of a remote hearing
On the 25 February 2022**

**Decision & Reasons Promulgated
On the 29 March 2022**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

**I Y
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S. Khan, Counsel instructed on behalf of the appellant
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

Anonymity :

Rule 14: The Tribunal Procedure(Upper Tribunal) Rules 2008:

Anonymity is granted because the facts of the appeal involve a protection claim. and 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 his family members. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

1. The appellant is a citizen of Turkey and of Kurdish ethnicity. He arrived in United Kingdom on or about 22nd of February 2013 and attended an asylum screening interview on 24 May 2013 when he was aged 14. His asylum claim was refused on 11 February 2014 as his credibility was not accepted. However, he was granted discretionary leave to remain until 12 August 2016 as he was a minor at the time. His asylum claim was never considered by an Immigration Judge because his appeal was withdrawn. On 18 July 2016 the appellant applied to extended discretionary leave to remain on the basis that he continued to fear persecution by the Turkish authorities.
2. On 4 September 2020 the respondent issued a new refusal of his claim. He appealed against the Secretary of State's decisions dated 11 February 2014 and 4 September 2020 to refuse his protection claim on the grounds of his political opinion or political opinion imputed to him by the Turkish authorities and based on his human rights claim resulting from his family and private life established in the United Kingdom.
3. The factual basis of the appellant's claim was that he had been helping the youth branch of the Peace and Democracy Party (BDP) by disputing leaflets in X concerning an attack on the BDP office by Turkish nationalists. The Peace and Democracy Party was a Kurdish political party which was viewed as separatist group by the Turkish authorities. The appellant attended meetings of the BDP and distribute their leaflets. This led to his arrest and mistreatment on 21 August 2012. He was released due to a lack of evidence. He nevertheless continued his political activities as he felt the cause was important due to his mistreatment at school on account of him being Kurdish.
4. The appellant was arrested and mistreated for a 2nd time on 15th February 2013 following a roundup of Kurdish households on the day of a Kurdish political protest. He was again released due to lack of evidence that this time was given a reporting condition. He had heard of a friend who had reported back in the situation and had been severely tortured, so he fled Turkey illegally with the assistance of an agent. The appellant feared that if he returned to Turkey would be detained and ill- treated due to his failure to abide by the reporting condition of his release on 15 February 2013. The appellant also feared that he would be compelled to perform military service despite him being a conscientious objector.
5. The article 8 claim was based on his family life with his brother and would face very significant obstacles to his reintegration on return to Turkey.
6. The FtT Judge dismissed the appeal on protection and human rights grounds in a decision promulgated on 7 April 2021 (although stated as 7 April 2020).

7. The appellant appealed on two grounds; both of which submit that the FtTJ erred in his assessment of the credibility of the appellant's claim by failing to take account of relevant evidence and the second ground by failing to take account of a material factor when assessing credibility and risk relating to the family members who had been granted refugee status (*IA HC KD RO HG (Risk, Guidelines, Separatist) Turkey CG [2003] UKIAT 00034* (28 July 2003) and *A (Turkey) CG [2003] UKIAT 00034* applied).
8. Permission to appeal was granted by FtTJ Boyes in a decision written on 17 June 2021.
9. The hearing took place on 25 February 2022, by means of *Microsoft teams* which has been consented to and not objected to by the parties. A face-to-face hearing was not held because it was not practicable, and both parties agreed that all issues could be determined in a remote hearing.
10. Ms S. Khan of Counsel and Mr Diwnycz, the Senior Presenting Officer also attended by way of video link. I confirm that there were no issues regarding sound, and no substantial technical problems were encountered during the hearing, and I am satisfied that both the advocates were able to make their respective cases by the chosen means. Ms Khan, Counsel on behalf of the appellant in her oral submissions relied upon her written grounds. At the hearing Mr Diwnycz on behalf of the respondent informed the Tribunal that he accepted that the appellant's grounds of challenge were made out and that the decision of the FtTJ involved the making of a material error on a point of law and that the decision as a consequence should be set aside.
11. It was accepted by the respondent that in relation to ground 1, that the FtTJ erred in his assessment of the appellant's credibility by failing to address the country materials when reaching his overall assessment. Whilst the FtTJ stated at [35] that there were "simply too many discrepancies and anomalies in the evidence upon which he relies" this was not the position when reading the decision from paragraphs [23-34]. The FtTJ found that the appellant's account of the events leading to him leaving Turkey was broadly consistent with the background country information and that his first statement of 20 June 2013 contained "a significant level of detail". As to the anomaly as to the timing of the attack on the district offices of the BDP, the judge found that given the time of year when the attack took place (late summer) this was a plausible explanation (at [25]) and therefore found in his favour in that respect. At [26] the judge referred to the absence of background country information to support the appellant's account of the "roundup" that he says took place on 15 February 2013. The judge stated that he treated that absence as "essentially neutral".
12. The adverse points made by the FtTJ related to the "apprehension order". At paragraph [29] he rejected the explanation given by the appellant that the lawyer in Turkey was frightened to provide written evidence confirming his role in obtaining the document. It is accepted on behalf of the

respondent that the findings made did not take account of the country materials. In particular, the appellant relied on background evidence where lawyers had faced threats for defending political opponents (see references made to pages 104, 105, 108 and 115, 151 of the appellant's bundle ; lawyers defending those accused of terrorism offences had been arrested themselves; lawyers reported they come under undue pressure from the police, and it is recorded that most lawyers interviewed by human rights watch expressed concerns for their own safety). It is also accepted that the judge did not take account of the totality of the explanations given by the appellant. At paragraph 4 of the witness statement dated 2/12 /2019, the appellant set out that the lawyer had been afraid to provide anything further based on what he stated had happened recently to lawyers. Whilst the judge had had referred to an earlier witness statement there was a further witness statement dealing with that issue.

13. The judge also found that the details contained within the document "are at odds with the appellant's account in at least 2 respects". The FtTJ referred to the contents of the apprehension order which stated that the appellant had been suspected of "being a member of a terrorist organisation". The judge found "whilst it is plausible that rogue police officers might act in an oppressive and unlawful manner towards members of a separatist – but nonetheless legal – organisation, there is no evidence to suggest that such actions would be upheld and supported by the Turkish judiciary". In this regard it is accepted that there was background material which had not been assessed when reaching this finding (see references made at paragraph 8 of the grounds of challenge referring to page 105, page 112, and page 153 of the appellant's bundle referring to the problems faced by the judiciary after the coup attempt). The last point made that the FtTJ referred to the appellant being at risk from "rogue police officers" however it is accepted that the finding did not take account of country materials relating to state policy against perceived Kurdish separatism (see references made to paragraph 9 of the grounds). Whilst there were other points made by the FtTJ the overall assessment did not take account of that material. For those reasons it is accepted on behalf of the respondent that the judge did not properly assess the claim and the appellant's credibility in the light of the background material and thus gave insufficient reasons for rejecting the appellant's claim.
14. Ground 2 asserts that the judge failed to take account of the material factor in assessing the appellant's credibility. This ground relates to paragraph 34 of his decision, and it is submitted that the judge attached very limited weight to the evidence of 2 of the appellant's brothers having been granted refugee status as supporting the appellant's account. The ground submit that the judge erred in law in placing no weight on this point and the appellant came from a family that was politically active in Kurdish separatist politics. Thus this evidence supported the appellant's credibility of his own political actions and the way the Turkish authorities would have treated him.

15. It is not necessary to consider ground 2 which related to the assessment of risk on return applying the risk factors set out in the country guidance decision of *IA HC KD RO HG (Risk, Guidelines, Separatist) Turkey CG [2003] UKIAT 00034* (28 July 2003) and *A (Turkey) CG [2003] UKIAT 00034* as the assessment of risk relies upon the factual findings made as to the credibility and plausibility of the appellant's account.
16. Both parties agree that the judge did not properly assess the claim in light of the background materials and thus gave insufficient reasons for rejecting his claim. In the light of the concession made on behalf of the respondent, and on the submissions as provided, I am satisfied that the errors are material as they relate to the overall issue of credibility and plausibility of the appellant's account. As the grounds set out, there was a mixture of factual findings made some were in favour of the appellant and others principally in relation to the apprehension order were adverse to the appellant. As the errors relate to certain aspects of the country materials and as they were not assessed or taken account of in the context of the factual findings, and the evidence given by the appellant, the overall assessment of the credibility of the appellant's account is flawed.
17. I am further satisfied that the appeal falls within paragraph 7.2 (b) of the practice statement, and I therefore remit the appeal to the First-tier Tribunal for that hearing to take place as both advocates have submitted. I do not preserve any findings of fact made and it will be for the tribunal to undertake a holistic assessment of credibility in the light of the evidence as a whole including the country materials. I note that some of the materials are now out of date and should be updated for the hearing.
18. Ms Khan referred to the report of Dr Ahmed and stated that in view of the problems that there had been at the hearing that a further expert report would be obtained. That will be an issue for case management before the First-tier Tribunal.

Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law; the decision is set aside.

The appeal is remitted to the First-tier Tribunal for a hearing.

Rule 14: 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 his family members. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Appeal Number: IA/01993/2020 (PA/51541/2020)

Signed Upper Tribunal Judge Reeds
Dated : 27 February 2022