



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

Appeal Number: AA/13768/2011

THE IMMIGRATION ACTS

Heard at : Field House

On : 27 June 2013

**Determination
Promulgated**

On : 1 July 2013

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

MEHMET ALI SERIN

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

Respondent

Representation:

For the Appellant: Ms M Thirmaney of Trott & Gentry Solicitors

For the Respondent: Ms H Horsley, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of Turkey, born on 20 August 1973. He arrived in the United Kingdom on 7 November 2011 and claimed asylum on 13 November 2011. Following an interview on 23 November 2011, his claim was refused on 5 December 2011 and a decision was made the same day to remove him from the United Kingdom.

2. The appellant appealed against that decision and his appeal was heard by First-tier Tribunal Judge Jhirad on 24 January 2012. The appeal was dismissed. Permission to appeal to the Upper Tribunal was granted to the appellant on 26 March 2012.

The Appellant's Case

3. The appellant's claim, in summary, is that he fears being killed by the Turkish authorities if returned to Turkey. He claims to have been an active member of the BDP, the Peace and Democratic Party, from January 2010, and to have been arrested and detained on three occasions. The first occasion followed his involvement in the Newroz celebrations on 20 March 2010 and was as a result of his perceived involvement with the BDP; the second occasion on 21 June 2011 was as a result of suspected liaising with the KCK on behalf of the BDP; and the third occasion was on 6 October 2011 as a result of accusations of having provided clothing to the PKK from his textile business and taking orders for this from his cousin whom he had recently visited in prison on two occasions. On the third occasion, the police asked him to co-operate with them and provide them with information about the PKK which he agreed to do in order to stop them torturing him. The day after his release he went to Istanbul to stay with cousin and whilst there was told by his sister that the police had raided his house and asked about him and his brother. He then fled the country.

4. The respondent, in refusing the appellant's claim, did not accept that he was a member of the BDP since his age was inconsistent with his claim to have joined the youth branch of the party. In the light of that finding the respondent did not accept that the appellant had undertaken the activities he claimed or that he had been detained as claimed. With regard to the first detention the respondent in addition did not accept that the anti-terrorist branch of the security forces would have specifically targeted him and arrested him from his home when he claimed to be only an ordinary member of the BDP. The respondent considered in any event that the fact that he was released after only three days with no charges and no reporting conditions showed that he was of no real interest to the authorities. The same reasons were given by the respondent for rejecting the appellant's account of his second detention. With regard to the third detention, the respondent did not accept that the authorities would have any interest in monitoring his cousin's visitors or would suspect that his cousin was still able to co-ordinate PKK activities, when he had been in prison since 1995. For all of those reasons the respondent also rejected the appellant's account of his departure from Turkey. The respondent considered that even if the appellant's account was true, he was not of a profile which would give rise to any risk on return under the principles in the country guidance in IK (Returnees, Records, IFA) Turkey CG [2004] UKIAT 00312.

5. The appellant's appeal was heard by First-tier Tribunal Judge Jhirad on 24 January 2012. The appellant was represented but there was no appearance on behalf of the respondent. The judge heard from the appellant and from his

representative. She did not accept the appellant's account to be credible and she found that he would be at no risk on return to Turkey. She accordingly dismissed the appeal on asylum, humanitarian protection and human rights grounds.

6. Permission to appeal was sought on behalf of the appellant on the grounds that the judge had failed to make findings on material issues in the appellant's case; that there was unfairness in the judge's assessment of the evidence of the appellant's first detention; that the judge's assessment of the documentary evidence was flawed; that the judge's assessment of the appellant's cousin's links to the PKK was flawed; and that the judge had erred by failing to consider the appellant's case in line with the country guidance in IK.

7. Permission to appeal to the Upper Tribunal was granted on 26 March 2012 on the basis of the judge's arguable failure to make findings on a crucial aspect of the appellant's case, namely the three detentions.

8. In a determination promulgated on 5 October 2012, Upper Tribunal Judge Kekic dismissed the appellant's appeal, having considered it on the basis of the papers before her without an oral hearing and having found there to be no error of law in Judge Jhirad's decision. However, following an application by the appellant for permission to appeal to the Court of Appeal, she subsequently set aside her own decision on 21 November 2012 and made directions for the matter to be listed for an oral hearing in order to determine whether the First-tier Tribunal made an error of law.

Appeal Hearing

9. The appeal came before me on 27 June 2013. I heard submissions from both parties.

10. Ms Thirumaney relied and expanded upon the grounds of appeal. She submitted that the judge had not undertaken any assessment of the appellant's account of the three detentions and that her findings only briefly touched upon one detention. She did not undertake any assessment of the appellant's political activities and had only made findings on the documentary evidence and not the appellant's actual activities. There had been procedural unfairness on the judge's part when she raised, in her determination, the issue of the appellant's failure to depart Turkey after his first detention when that was not a matter previously raised or put to the appellant at the hearing. Likewise there had been procedural unfairness in her findings on the family tree when the concerns had not been put to the appellant. Ms Thirumaney submitted further that the judge had misunderstood the appellant's evidence about the last arrest and that he was not claiming to have been arrested because of his relationship to his cousin but rather because of his recent visit to him in prison. There had also been an error in the judge's failure to give proper consideration to the guidance in IK.

11. Ms Horsley produced the decision in Gheisari v Secretary of State for the Home Department [2004] EWCA Civ 1854 in submitting that the judge had done an adequate job in determining the appeal. Her findings had to be considered alongside the refusal letter which she explicitly referred to and relied upon. She had rejected the core facts of the case and had given reasons for placing no weight upon the BDP documents. The judge had not misunderstood the appellant's evidence about his cousin as that was clearly set out in the refusal letter which the judge had considered. Whilst the judge had not put to the appellant the point raised about his failure to depart after his first detention, that was not sufficient grounds for the decision to be set aside, when paragraph 35 of the refusal letter gave other reasons for rejecting the appellant's account. The judge gave reasons why she rejected the family tree and she was entitled to rely on those reasons. The burden of proof lay upon the appellant and she was entitled to find that he had not met it. In any event, the judge went on to make alternative findings even if the appellant was related to Kemal as claimed. Specific reference to IK was irrelevant given the adverse findings made. The judge did not make any errors of law.

12. In response, Ms Thirumaney submitted that the judge should have raised concerns about the family tree at the hearing. It was not sufficient for her to merely state that she had considered the refusal letter.

DECISION

13. There is no doubt that Judge Jhirad's determination could have benefitted from more detailed and comprehensive reasoning. Indeed, in the light of her somewhat limited reasoning, my preliminary view, having heard Ms Thirumaney's submissions and before hearing from Ms Horsley, was that there may well be some merit in the grounds of appeal. However, having now considered Ms Horsley's submissions and undertaken a closer examination of the determination, it is my view that her findings and reasoning are adequate and that her decision ought not to be set aside.

14. In so concluding, I have taken into consideration the views of the Court of Appeal in Gheisari, as well as the findings of the Upper Tribunal in the more recent case of Shizad (sufficiency of reasons: set aside) [2013] UKUT 00085, where the Tribunal stated in their head-note, albeit in different circumstances:

(2) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her."

15. It seems to me that the conclusions drawn by Judge Jhirad from the oral and documentary evidence were indeed reasonably open to her and that, contrary to the assertions made in the grounds of appeal, and despite the limited reasoning, it is clearly discernable from her determination what her findings were.

16. The grounds of appeal assert, in the first instance, that the judge made no findings on the appellant's three detentions and his political activities. However, that is not the case. Although she did not go through the appellant's account of each individual detention and give fully reasoned findings for each incident, it is clear from her findings at paragraphs 9 and 10 that she did not accept any of his claim, including that relating to his political activities and his periods of detention. She rejected the core of his claim, for the reasons set out in the refusal letter at paragraphs 31 and 52, which she found to be cogent and sustainable, and for the reasons she subsequently set out herself, albeit such reasons referring explicitly to only the first and last detention but clearly including by implication the second detention. She found, at paragraph 10.4, that there was no medical evidence to support his claim to have been tortured in detention and at paragraph 10.6 she did not accept the letter from his GP with regard to his psychological state as evidence of torture. Those were conclusions that she was entitled to reach.

17. With regard to the appellant's political activities the judge gave reasons, at paragraph 10.5, for attaching no weight to the documentary evidence relating to his claimed membership of the BDP and those reasons were open to her on the evidence before her. Paragraph 12 of the grounds asserts that the judge's rejection of that evidence was irrational, but that is clearly not the case and the grounds in that respect amount to no more than a disagreement with the judge's findings. Ms Thirumaney submitted that the judge had only considered the documentary evidence relating to the BDP and not the appellant's activities for the BDP. However her findings on the documentary evidence relied upon by the appellant to support his alleged activities were clearly relevant to her findings on his involvement with the party overall, in particular when considering her comment at paragraph 10.5 that they had been produced "only to gild the lily of incredulity". Such findings, when taken together with the judge's reference at paragraph 9 to the cogent reasons given in the refusal letter, provide adequate reasons for reaching the conclusion that she did, such conclusions being reasonably open to her on the basis of the findings made at paragraph 33 of the refusal letter. Although the judge made no explicit reference to the appellant's response, in his witness statement, to paragraph 33 of the refusal letter, it is clear from her comments at paragraph 6 of her determination and her record of the evidence that she had that mind when concluding that the respondent's reasons were sustainable.

18. The grounds assert that there was procedural unfairness on the part of the judge in that she raised a point against the appellant, namely his failure to leave Turkey after his first arrest, without it having been put to him first as an issue of concern. However whilst, as Ms Horsley accepted, the judge ought arguably not to have relied upon a new issue without giving the appellant an opportunity to address it, I do not consider that to be material to her adverse findings, given that other reasons were given for not accepting his account of his first detention at paragraph 35 of the refusal letter which the judge clearly endorsed as being cogent and sustainable.

19. It is asserted in the third ground that the judge's rejection of the family tree produced by the appellant was irrational and flawed since her concerns were not put to the appellant at the hearing and since the source of such evidence was referred to extensively in IK. However in my view the judge's findings in that regard cannot be said to be irrational or unfair and that they were open to her. She was entitled to place the weight that she did upon the family tree for the reasons she gave and it does not appear to be the case that she was referred to the provisions in IK in which mention was made as to the source of such information. In any event, nothing material arises from the judge's findings in that respect, given that she went on to make findings in the alternative if the appellant's relationship to Kemal was accepted.

20. Those findings, at paragraph 10.2, are the subject of the fourth ground of appeal, where it is asserted that the judge misconstrued the appellant's case. The appellant's case, it is claimed, was that he was of interest to the Turkish authorities, leading to his arrest in October 2011, because of perceived links to the PKK arising out of his visit to his cousin in June and July 2011, and not simply because he was related to Kemal. However the appellant's claim in that respect was specifically dealt with and rejected by the respondent at the end of paragraph 38 of the refusal letter, such reasoning then being endorsed by the judge, as cogent and sustainable, at paragraph 9 of her determination. The findings she specifically set out at paragraph 10.2 were supplementary to those in the refusal letter and were in any event not entirely irrelevant to the scenario described by the appellant. She did not find it credible that the authorities would not have known about Kemal's relatives and questioned them in the preceding years, had they had any concerns about their links to the PKK. The clear implication from those findings being that she did not accept that the authorities would have suspected the appellant of links to the PKK simply by reason of him visiting his cousin in July 2011. That was a conclusion that was open to her to make on the evidence and was one that was reasonably drawn from the information and evidence before her.

21. Finally, the fifth ground asserts that the judge erred by failing to consider the appellant's case in line with the country guidance in IK. However the judge had regard to that case at paragraph 5 of her determination and, given the adverse credibility findings she made, there was nothing in the appellant's profile that could have led to any conclusion other than the one she reached in assessing risk on return within that guidance.

22. Taking the judge's decision as a whole, I find that it contains adequately reasoned and sustainable findings of fact on all relevant and material issues, based upon an assessment of the evidence going beyond mere endorsement of the refusal letter. Whilst it may not be the most well-reasoned and well-written determination, it adequately deals with the relevant issues and contains conclusions reasonably open to the judge on the evidence before her. It does not contain errors of law and accordingly I do not set aside the decision.

DECISION

23. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appellant's appeal therefore stands.

Signed
Date

Upper Tribunal Judge Kebede