



IAC-AH-DP-V1

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

Appeal Number: AA/03764/2015

THE IMMIGRATION ACTS

Heard at Birmingham

On 26th February 2016

**Decision &
Promulgated**

On 18th March 2016

Reasons

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

A K

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Miss C Johnstone (Senior Home Office Presenting Officer)

For the Respondent: Ms K Chandrasingh (Solicitor)

DECISION AND REASONS

1. The Appellant before the Upper Tribunal is the Secretary of State for the Home Department. I shall, hereinafter, refer to her as “the Secretary of State”. I shall refer to the Respondent as “the Claimant”. The Secretary of State has appealed to the Upper Tribunal, with permission, against a decision of the First-tier Tribunal (Judge Hubball hereinafter “the Judge”)

allowing the Claimant's appeal against a decision of 19th February 2015 refusing to grant him asylum and deciding to remove him from the UK by way of directions.

2. The Claimant is a national of Turkey. He claimed to have been born on 16th June 1994 but the Secretary of State did not believe him and, as it turns out, nor did the Judge. The Judge concluded that, in fact, he had been born on 16th June 1994. Be that as it may, he claimed asylum on 16th November 2012 having come to the UK in possession of a valid visa. He said that, as a Kurd (and it is accepted that he is Kurdish), he had faced ill-treatment at the hands of the Turkish authorities. He said that if he were to be returned to Turkey he would be forced to do military service and that he had conscientious objections to that because he did not want to be put in a position where he would have to kill people. He also expressed a fear of a Kurdish separatist organisation known as the PKK, who he said would seek to forcibly recruit him.
3. The Secretary of State, it is fair to say, comprehensively disbelieved the Claimant's account of events in Turkey and the various claims he had made. So, the Respondent refused to grant him international protection and the Appellant exercised his right of appeal. He was successful. The Judge found him to be credible, accepted his explanation for various perceived inconsistencies in the account he had offered and concluded that he would be at risk on return at the hands of the Turkish authorities (in connection with the military service point) and the PKK. He reached these conclusions having heard oral evidence and having received what appear to have been quite extensive and detailed oral submissions. The relevant determination was promulgated on 1st June 2015.
4. The Secretary of State applied for permission to appeal to the Upper Tribunal. The grounds, which to some extent have the flavour of a detailed re-argument about them, criticised the Judge for failing to provide reasons or adequate reasons for certain of his findings. In particular, it is asserted that he did not properly deal with Facebook evidence which appeared to suggest that the Claimant's father and brother were at large at a time when the Claimant had said they were detained by the Turkish authorities. Further, the Judge, it was said, had irrationally accepted that the Claimant's brother had been released from detention as a suspected PKK supporter so that he could perform his own military service. Further the Judge had failed to deal with discrepancies in the Claimant's account regarding the claimed arrest of his father and brother. Further, the Judge had failed to explain why he was accepting much of what the Claimant had to say whilst simultaneously finding that he had lied about his age. Further, the Judge had failed to explain his acceptance of the Claimant's claim that the PKK had extorted money from his father and that the Claimant himself would be at risk of forcible recruitment to the PKK. There was then a final ground to the effect that the Judge had failed to properly consider whether the Appellant was a genuine conscientious objector.

5. Those grounds did not initially find favour, a Judge of the First-tier Tribunal refusing to grant permission to appeal, but the application was renewed and, on 24th August 2015 permission was granted by a Judge of the Upper Tribunal who said this;
 - “2. I find that the contention that no account was taken of those aspects of the Appellant’s account that the Respondent did not accept, is taking matters too far.
 3. However, having read the determination, I am persuaded that this application demonstrates that the First-tier Tribunal Judge may have made an error of law in failing to give adequate reasons for his findings on material matters.
 4. A losing party is entitled to know why they lost and the Judge has arguably failed to discharge his obligation in that regard, in this determination.”
6. There was then a hearing before me to consider whether the Judge had, indeed, erred in law and, if so, what should follow from that. Representation at that hearing was as indicated above and I am grateful to each representative.
7. Miss Johnstone, essentially, sought to rely upon the points which had been made in the grounds. She indicated that her main challenge was in relation to the Judge’s acceptance of the Claimant’s credibility and the explanation, or perhaps lack of it, for that acceptance.
8. Ms Chandrasingh contended, in essence that the Judge had given clear reasons for all of his findings, that irrationality was an extremely high threshold which had not been reached and that the conscientious objector issue had been adequately considered.
9. The Judge’s determination is a lengthy one. It is apparent that he has approached his task with diligence. He has set out, in some considerable detail, the oral evidence he received and the lengthy and detailed submissions which were made to him. It is certainly clear from a reading of the determination that he did, in large measure, find the Claimant to be a credible witness (the exception being the age issue), that he did regard claimed inconsistencies in the account as having been satisfactorily explained, that he did accept what the Claimant had had to say about his family’s previous involvement with the PKK, that he did believe the Claimant’s claim that he would be at risk of forced recruitment by the PKK, that he accepted his objections to military service were genuine and that, as such, he could properly be regarded as a conscientious objector (or at least a potential one in the event of refusal) who would be at risk in consequence. Indeed, the Judge appeared to find that that risk was two-fold in the sense that if he did perform military service against his conscience the rationale in **HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department 2010 UKSC 31** would apply and that, if he did not do it, he would receive disproportionate punishment. So,

although the determination is not always wholly easy to follow, it is apparent, on a careful reading, that the Judge did make findings about the various matters he was required to.

10. As to the Facebook issue, the Judge had regard to the Claimant's explanations, noting them at paragraph 43 of the determination. He noted the submissions which had been made to him about the issue at paragraph 92 of the determination. He resolved the points in the Claimant's favour at paragraph 131 and 132, making it clear that he accepted the Claimant's evidence. I did have a concern that, from one perspective, it might be said that the determination contained a summary of the evidence on the point and then the findings without a sufficiently clear explanation as to how those findings had been made. In other words, I was concerned that the Judge might not have adequately explained why he chose to accept the Claimant's explanations. However, credibility was a matter for him. He heard extensive oral evidence from the Claimant and had that available to him alongside the written evidence. Although he could have said more it can be inferred that he found the explanations offered to be plausible and believed them to the lower standard applicable (the real risk test).
11. There is then the contention that the Judge's acceptance of the claim that the Appellant's brother had been released from detention to perform military service was irrational. On the face of it, it would be most surprising if the Turkish authorities, having arrested an individual for suspected PKK involvement, the PKK being a separatist anti-government organisation, would release such a person to perform military service. However, as Ms Chandrasingh points out and as Miss Johnstone recognised, albeit that she maintained the argument, the threshold for irrationality is very high. In my judgment, whilst the finding might fairly be described as surprising, that particular threshold is not reached.
12. There are then the points regarding the claimed lack of explanation concerning discrepancies relating to the account of the arrest of the father and the brother and the lack of explanation as to why the claims with respect to the PKK were accepted. It is apparent, though, as indicated, that the Judge did find the Claimant to be a credible witness. Credibility was, essentially, a matter for him and it was, of course, open to him to accept contentions and explanations for discrepancies offered by the Claimant if he found that Claimant to be credible. All of this comes down, again, therefore, to the question of whether there was sufficient explanation for the positive credibility assessment. Here, I fully accept that the Judge could have said more than he did. Nevertheless, it is clear he found explanations offered to him by the Claimant to be plausible. To some extent that has to be inferred but that can be done without difficulty or without falling into speculation when the determination is read as a whole. It is clear, for example, that the Judge's view of the plausibility of what he had been told led him to make the findings at paragraph 127 regarding the previous involvement of the family with the PKK and the

findings he made at paragraph 128 that his father and brother had been arrested, albeit, not at the same time.

13. I did wonder whether, with respect to the favourable credibility assessment, the Judge ought to have said something further as to why he felt able to make such an assessment despite his finding that the Claimant had lied about his age. The determination would, perhaps, have been more complete had there been some explicit reference to that. However, the Judge clearly knew he had reached a negative view (from the Claimant's perspective) as to that and it follows that he would have taken that into account in making his other findings. It was open to him to believe the bulk of an account offered to him even if one aspect of it was not to be believed. What he did and did not believe was, essentially, a matter for him.
14. There is then the conscientious objector issue. It is fair to say, though, that Miss Johnstone did not seek to pursue this with a great deal of vigour before me, making it clear, as indicated above, that her primary attack was upon the Judge's credibility findings. I have already concluded that, despite some misgivings, what the Judge had to say about all of that was sufficiently sound. I accept Ms Chandrasingh's submission that the Judge did properly consider the conscientious objector issue with the relevant authorities in mind, even if not expressly referred to, and that he also properly considered and attached weight to the Secretary of State's own Operational Guidance when addressing the issue. It was open to him, in my judgment, to conclude that the Claimant had genuine conscientious objections to service and that that was properly underpinned by his objection to killing. It was then open to the Judge to conclude that, on both of the above bases which he did (see above), he would be at risk as a consequence of his genuine objections.
15. I can understand why permission to appeal was granted in this case. The determination is sometimes a little difficult to follow but a fair reading does reveal, in my judgment, that the Judge reached findings and conclusions open to him on the evidence and which were adequately (and that is the standard, nothing higher than that) explained. Accordingly, I conclude that the Judge's decision did not involve an error of law and shall stand. This means, of course, that the Secretary of State's appeal to the Upper Tribunal is dismissed.

Notice of Decision

The making of the First-tier Tribunal's decision did not involve the making of an error of law. The decision shall stand.

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

him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Upper Tribunal Judge Hemingway

**TO THE RESPONDENT
FEE AWARD**

As no fee is paid or payable and there can be no fee award.

Signed

Date

Upper Tribunal Judge Hemingway