



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

Appeal Number: AA/11529/2014

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 18<sup>th</sup> March 2016**

**Decision & Reasons Promulgated  
On 1<sup>st</sup> June 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HANBURY**

**Between**

**I A  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms A Patyna of Counsel

For the Respondent: Mr M Diwnycz a Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The appellant, a citizen of Turkey born on [ ] 1996, appeals against the decision of First-tier Tribunal Judge Hussain (“the Immigration Judge”) to dismiss his appeal against the respondent’s decision to refuse him international protection. He was granted permission to appeal to this Tribunal by First-tier Tribunal Judge Shimmin who found that the judge had arguably not given sufficient reasons for adversely finding against the appellant on his credibility. Also, Judge Shimmin thought the Immigration

Judge may not have engaged fully with the country guidance put before him.

## **Background**

2. The appellant left Turkey on 27 November 2010 and travelled through a number of other countries, with the help of an agent, on a Cyprus ID card. He arrived in the UK on 30 November 2010. However, the respondent says in her decision that the appellant arrived into the UK on 8 February 2013. The appellant made his claim for asylum on 1 May 2013.
3. The application was considered but refused by a letter dated 26 November 2014 and the notice of the respondent's intention to remove the appellant was given on 10 December 2014.
4. The respondent's refusal refers to the appellant's application for asylum and states that the respondent considers that claim, as well as the claim to international protection under paragraph 339C of the Immigration Rules, are ill-founded. Paragraph 339 of the Immigration Rules states that for a person to be in need of humanitarian protection there have to be "substantial grounds for believing" that he would suffer a real risk of serious harm". The appellant also relied on the European Convention on Human Rights (ECHR), specifically on Articles 2 and 3. That application was also refused because it was not considered the appellant had would suffer inhuman or degrading treatment in Turkey, nor would he likely to be unlawfully killed. The appellant was informed of his appeal rights.
5. The appellant appealed the refusal by notice of appeal dated 29 December 2015 indicating that the Immigration Judge had not properly considered the appellant's own evidence or indeed the objective evidence.
6. Directions were sent out for a hearing at Hatton Cross but the appeal was heard at Richmond Magistrates Court. The Immigration Judge, having taken into account the appellant's evidence and considered the documents, considered that the appellant's credibility was seriously damaged because of his delay in claiming asylum, the fact that he had gone through a number of safe countries before claiming asylum in the UK and because much of his evidence was "embellished".

## **The appeal to the Upper Tribunal**

7. The appellant appealed against the dismissal of his appeal before the First-tier Tribunal to the Upper Tribunal on 29 December 2015. The grounds state that the Immigration Judge erred in law because the appellant was a supporter of the BDP Party but was an alleged supporter of the PKK, a pro-Kurdish political party. His brother Abdullah gave evidence to support his appeal. The Immigration Judge is alleged to have taken "the incorrect approach" to Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 ("Section 8"). The short delay between the appellant's arrival into the UK and his interview was

accounted for by the fact that he needed to contact solicitors and no adverse credibility findings should have followed from this fact. The appellant has taken advantage of his opportunity to claim asylum while in a safe country. The Immigration Judge had allowed the incorrect findings to underpin his adverse assessment of credibility.

8. Secondly, the Immigration Judge is alleged to have made incorrect assumptions. At paragraph 36 of the decision the Immigration Judge observed that the appellant, a young adolescent, had not given adequate details of his involvement with the BDP. This criticism was wrong because the Immigration Judge could not speculate to what level of understanding a young person, such as the appellant, could be expected to have. The appellant had given evidence of his own BDP activities through his uncle and friends. The appellant's account was consistent with the objective evidence about the political context in Turkey. The Immigration Judge wrongly relied on his own assumptions, finding that it was "highly improbable that neither the appellant nor his brother, who is much older, would be able to reach out to other extended family members of (sic) friends in their anonymity...". No reasoning was given for this finding.
9. Finally, there was the failure to engage with the country guidance material including the case of **IK Turkey [2004] UKIAT 00312** and **A (Turkey) [2003] UKIAT 00034**. Crucially, family connections with separatist organisations would represent heightened risk factors affecting the safety of the appellant's return.
10. As I have recorded above, First-tier Tribunal Judge Shimmin thought these grounds were at least arguable.
11. The respondent provided the response under Rule 24 of the Upper Tribunal Procedure Rules 2008. However, the respondent appears not to have been in possession of the relevant decision at the time of this response!
12. At the hearing both parties were represented. Ms Patyna submitted that her clients had demonstrated support for a separatist organisation. He would be perceived to be a threat because of the possible PKK support. The appellant had travelled to the UK at the age of 16. Therefore, at the time he gave evidence before the FTT he had reached 18, having had very limited (five years) of primary education. The appellant's background was of pro-Kurdish support. The Immigration Judge should have carried out a proper assessment of credibility having regard to the background case of **IK (Turkey)** and the case of **A Turkey** (references above). The appellant's ethnicity was enough to put him at risk.
13. Furthermore, the assessment under Section 8 was flawed and there was no proper basis upon which the Immigration Judge could have reached the conclusion that he had reached. In the circumstances I was invited to allow the appeal.

14. In granting permission Judge Shimmin pointed out that the appellant appeared not to have given adequate reasons for his adverse credibility findings and in particular his adverse credibility finding on Section 8. The appellant had arrived in the UK on 8 February 2013 and made his claim for asylum in May 2013. The delay was therefore fairly short. The Immigration Judge had rejected suggestions that the delay had been caused by the need to contact solicitors. The appellant's brother had supported the appellant's account. Therefore, there were no adequate reasons for rejecting the brother's evidence and nothing to suggest that the brother was not a credible witness. The starting point was arguably incorrect. The second submission was that the Immigration Judge has based his decision on speculation and assumption rather than fact. The appellant was not accepted as being a member of a pro-Kurdish organisation. The appellant had shown his commitment to that cause by long involvement through an uncle. The appellant only needed to be involved in such activities to be of interest to the authorities in Turkey. Paragraph 39 of the Immigration Judge's decision revealed that the appellant claimed to carry leaflets containing pictures of the leader of the PKK. However, the Immigration Judge did not accept this evidence. It was argued by Ms Patyna that the Immigration Judge's rejection of this evidence was based on speculation. It would have been highly unlikely that the appellant would have made this up. The appellant had put forward the country guidance evidence which had been wrongly rejected. It was submitted that there were a number of risk factors in this case which should have been accepted by the FTT.
15. The respondent said by reply that the appellant's brother is due to be returned to Turkey. I was referred to the documents (at X77 in the appellant's bundle) which indicate that the appellant's brother had claimed asylum. It was noted that the appellant's brother had been subject to a decision to remove him as an illegal entrant. It was noted that his appeal had been rejected by Immigration Judge Kelly on 3 August 2012.
16. At this point Ms Patyna pointed out that the appellant's father had been kidnapped in 2002 because of his "political involvement" and the same factors had been before the Tribunal in Ali's case.
17. Mr Diwnycz went back to his submissions, saying that the Section 8 point had to be put in its proper context. It was not considered determinative of the issues. However, the respondent did consider it had been reasonable to refer to it. There was also country guidance material referred to in the refusal (see for example paragraph 33). Contrary to the submissions made on behalf of the appellant, the Immigration Judge had engaged with this material in his decision. He had referred to the case of **IK** and had dealt with all the evidence. It was accepted, however, that he had not made as extensive a reference to country guidance material as he might have done.

18. Finally, Ms Patyna pointed out that the wrong starting position had been adopted by the Immigration Judge. I was particularly referred to paragraph 29. The Immigration Judge appears to have regarded Section 8 as the starting point. However, it was accepted on behalf of the appellant that the Immigration Judge had been entitled to find the account incredible. Finally, I was invited to re-list the matter for a fresh hearing before the FTT.
19. At the end of the hearing I announced my decision which was that the Immigration Judge had made a credibility assessment, which included consideration of the delay and the reasons for that delay put forward by the appellant. Having heard extensive evidence, the Immigration Judge had been entitled to reject the appellant's account. He appeared to have given adequate consideration to the country guidance material, although this had not been as extensive as would have been desirable. Accordingly, the decision was open to the Immigration Judge.
20. I will later set out my reasons in greater detail having set out the issues as I see them to be.

## **Discussion**

21. Section 8 requires the deciding authority, in this case the IAC, to take into account behaviour of certain types. This includes behaviour designed or likely to "delay the handling or resolution of the (asylum) claim". It also covers a delay in making a claim before an immigration decision (see Section 8(5)). Section 8 does not require an Immigration Judge to give any particular weight to the behaviour covered by the Section. It does, however, require a judge in certain circumstances to "take into account" that behaviour.
22. The Immigration Judge, with respect, did not give clear reasons for his reliance on Section 8 in paragraph 30 of his decision. In particular, there appears to be a missing negative in either the first or the fourth sentences. However, it is possible to make sense of the Immigration Judge's reasons in paragraph 30 for finding that Section 8 did apply. They include the timing of the appellant's claim. In essence, the appellant had arrived in the UK on 8 February 2013 but had not advanced his asylum claim until 1 May 2013. As I understand the Immigration Judge's reasoning, he did not accept the delay was wholly down to the respondent, as was claimed by the appellant. As the Immigration Judge rightly pointed out, no evidence had been called from the appellant solicitors to confirm the date when they are said to have been given instructions and contacted the respondent for the first time. The Immigration Judge was entitled to regard this as a negative factor in deciding whether to accept the appellant's account of the reason for the delay.
23. Furthermore, the Immigration Judge did point out that the respondent's reliance on Section 8 was "not determinative" of the question of his credibility and I agree with that observation. Again, the Immigration Judge

could have put matters better in the final sentence of paragraph 30, but in substance, he was dealing with a person who had not put forward a claim at the earliest opportunity but had delayed for up to three months in advancing his claim. This was a negative factor as in those three months it would have been open to the appellant to “get his story straight” by, for example, comparing notes with his brother.

24. Therefore, in absence of any information from the appellant’s solicitors the Immigration Judge was entitled to reject the evidence of the appellant’s brother in this regard which was likely to be tainted and partisan.
25. The second ground and the ground for attacking the decision of the Immigration Judge is that, it is said, the Immigration Judge was not entitled to reject the appellant’s account for its lack of detail and conclude that he was not politically active as he had claimed. The Immigration Judge should have had regard to the appellant’s young age (16 when he came to the UK at approximately 18 at the date of the hearing) and concluded that there may have been an adequate explanation for the appellant’s failure to recount precise details. It is said, by reference to the case of **Y v Secretary of State [2006] EWCA 1223** per Keene LJ, that there was a danger the Immigration Judge was bringing to bear his own subjective experiences and attitudes rather than properly taking into account all the evidence and weighing it up as he was required to do. Secondly, it is said that the Immigration Judge was not entitled to find it incredible that the appellant, who appeared to be confused as to which leaflets he had or had not distributed, would refer to a PKK leaflet as having a photograph on it. The Immigration Judge is criticised for commenting on the appellant for an apparent shift of position, where he said that the leaflets he helped with may have been for the PKK or the BDP. BDP was a party whose activities overlapped with PKK and it was said that there was in either case a significant risk that the appellant would come to the attention of the authorities. Furthermore, the Immigration Judge did not set this finding against the background material as he should have done.
26. The Immigration Judge had proper regard to the totality of the evidence and did not make assumptions. He was, however, entitled to reach his own view having heard the appellant and his brother give evidence. He took account of the fact that the appellant was a Turkish Kurd with a family background of possible anti-government activity. The appellant had claimed to be of interest to the authorities by virtue of the involvement of family members with the PKK or similar organisations. However, there were a series of powerful points against the appellant including his lack of knowledge of the Kurdish separatist movement and Kurdish issues generally. He was not a child when he came before the Immigration Judge and the Immigration Judge was entitled to treat his account with the degree of scepticism with which he did treat it.
27. The final point of attack relates to the alleged failure on the part of the Immigration Judge to engage with the country guidance case of **IK [2004] UKAIT 00312**. I note that the Immigration Judge specifically referred to

this case at paragraph 42 of his decision. The Immigration Judge clearly had regard to the fact that returnees on emergency travel documents who have a Kurdish background may be taken into custody and questioned. The Immigration Judge was entitled to conclude that in this case such questioning would not “reveal any information” that might be of interest to the authorities.

28. A decision-maker is required to make an assessment of the risk factors in each case having regard to all the circumstances of the case set against the background material. In this case it is said that there was a material error in not properly weighing-up the appellant’s circumstances against the background material. I find this submission somewhat vague. The Immigration Judge clearly had regard to the background case law and did not accept that the appellant had been active in the Kurdish separatist movement as the appellant had claimed. The Immigration Judge was entitled to reach this conclusion having rejected the appellant’s evidence that the risk factors were not sufficiently grave to put him at risk on return to Turkey.

### **My conclusions**

29. The Immigration Judge heard evidence from the appellant and his brother. But, whatever impression his brother made, the Immigration Judge was clearly unimpressed by this appellant’s evidence, finding it to be inconsistent and confused. It is not possible for this Tribunal to go behind clear findings of fact and clear assessments of credibility made by the Immigration Judge having heard extensive evidence. The Immigration Judge clearly rejected the notion that the appellant was of interest to the authorities in Turkey and this was a conclusion he was entitled to come to on the evidence. It would have been desirable for the Immigration Judge to pay greater regard to the objective evidence than he did but I do not find that this criticism of the Immigration Judge is of sufficient significance to have made a difference to the outcome of this appeal.
30. For these reasons I am unable to accept that there was a material error of law in the decision of the First-tier Tribunal.

### **Notice of Decision**

The decision of the FTT does not contain any material error of law. This appeal is therefore dismissed. The decision of the respondent to refuse asylum/human rights protection in the UK stands.

The anonymity direction made by the Immigration Judge continues.

### **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

Dated

Deputy Upper Tribunal Judge Hanbury



**TO THE RESPONDENT**  
**FEE AWARD**

There was no fee award and I make no fee award.

Signed

Dated

Deputy Upper Tribunal Judge Hanbury