



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/08013/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

**Oral determination given following hearing
On 6 April 2018**

**Decision &
Promulgated**

On 1 May 2018

Reasons

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

MR Y

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs A Mughal, Legal Representative of Montague Solicitors LLP

For the Respondent: Ms A Fijiwala, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Turkey born on [] 1985. He claims to have left Turkey in January 2017 by lorry entering this country clandestinely on 16 January that year. He claimed asylum on 3 February 2017. His claim was refused by the respondent and the appellant's appeal against that decision was dismissed by First-tier Tribunal Judge O'Garro in a decision promulgated on 26 October 2017 following a hearing at Hatton Cross on 20 September 2017. The appellant now appeals to this Tribunal, leave

having been granted by First-tier Tribunal Judge Cruthers on 14 November 2017.

2. When giving his reasons for granting permission to appeal, Judge Cruthers noted that there was “little substance in at least some of the complaints made in the grounds” and that although it was “arguable that.... other criticisms... may be well-founded”, nonetheless “the appellant should not take this grant of permission as an indication that the appellant will ultimately be successful”.
3. Very helpfully before me, Mrs Mughal, representing the appellant did not seek to rely with any force upon some of the grounds which had been argued and in particular the ground that the judge had left out of account the appellant’s Kurdish ethnicity, which Judge Cruthers had considered specifically was a ground without substance. The case she advanced on behalf of the appellant was essentially on two grounds. The first was that the judge ought to have accepted that the appellant had been detained twice, rather than merely accepting that he had been detained once and making adverse credibility findings with regard to his claim to have been detained a second time, and secondly, that insufficient regard was had to the risk factors that he would face on return to Turkey even if he had only been detained once.
4. I heard submissions on behalf of both parties which I have recorded. Although I will not set out within this decision the submissions in full, I have had regard to everything which was said on behalf of both parties as well as to all the material contained within the file whether or not the same is specifically referred to below. With regard to the first submission that the judge ought to have accepted the appellant’s evidence with regard to his second detention, Mrs Mughal’s argument was that having found that he had been detained the first time, as he had said, she should not have rejected his account with regard to the second detention. She claimed that the reasoning was illogical because the appellant could not be properly said to be responsible for any failures of the authorities to make other investigations. What the judge had found at paragraph 32 was that she would have expected the authorities to have made enquiries of other members of the appellant’s family also. If the Tribunal were to find that the judge should have accepted that the appellant had been detained twice then it would follow that the judge had not considered the true position when considering the risk factors which would apply were the appellant to be returned because she had only considered the risk that he would face on the basis that he had only been detained once.
5. The second submission was that even if the judge’s adverse credibility finding was sustainable she still failed to consider adequately the risk on return having regard in particular to the changed situation within Turkey particularly within the last eighteen months, when there had been a number of incidents including bombing at the airport. She invited the Tribunal to note that at paragraph 64 of the very old but nonetheless long established country guidance decision in *IK (returnees - records - IFA) Turkey CG* [2004] UKIAT 00312, the Tribunal had referred to other

information systems beyond the GBTS system referred to within *IK*. It is submitted on behalf of the appellant that the judge failed to consider what other records there would be. With regard to the judge's finding that it was implausible that the authorities would not also have investigated the appellant's family it was submitted that this factor should be seen as a factor in favour of the appellant because it shows that he did not embellish his claim to state that his family had been investigated which he could have done.

6. On behalf of the respondent Ms Fijiwala referred the Tribunal to the judge's references to the risk factors contained within *IK* and also to references to what the authorities would discover were they to make further enquiries to which reference will be made below. With regard to the judge's rejection of the appellant's claim that he had been detained a second time, she submitted that this was entirely logical and was properly reasoned.

Discussion

7. I deal with the first ground to begin with. The judge gives her reasons for rejecting the appellant's claim to have been detained twice essentially at paragraph 22. The judge had in mind in particular that the appellant's claim was that he had been arrested when the authorities had found him with food to feed some ten to fifteen people in his bag when he was going up the mountain in order to graze the livestock from the family farm. The judge considered that if the authorities had indeed found the appellant with food and suspected him of taking it to the PKK as he claimed, they would not only have arrested the appellant but would also have made enquiries at the farm where the appellant lived to see whether or not the appellant's father and siblings were PKK supporters like him. The fact that it does not appear that they did so and also that the appellant's parents and other family members remained living in Turkey without any evidence that they had been arrested and detained because of their support for the PKK was inconsistent with the claim made by the appellant that he had been detained.
8. I bear in mind that this was a family farm and I do not accept the submission made on behalf of the appellant that this finding is somehow illogical because the appellant is not answerable for the failure of the authorities to take any particular action. What the judge was saying in effect was that it was implausible that the authorities would just have arrested this appellant when in the circumstances (which was that food was said to have been supplied to the PKK from a family farm) they would have been bound to make further investigations. In my judgment there is nothing illogical about this reasoning. Whether or not every judge would have drawn the same conclusions is not the point. Provided this is a conclusion which was open to the judge which in my judgment it was, the judge cannot be said to have made an error of law in reaching that conclusion.

9. I turn accordingly to consider whether or not it can realistically be argued that the judge failed to consider the risk factors which would face the appellant on return to Turkey on the basis that the judge had been entitled to find that he had only been detained once. Although it is argued on the appellant's behalf that the judge failed to take account of the possibility that other computer records beyond what was on the GBTS computer system might have put the appellant at risk, in fact the judge did specifically consider this at paragraph 43 where she found as follows:

"43. I have found the appellant did not have a well-founded fear of persecution in his home area. I find that the authorities there had no real interest in the appellant. An enquiry to his local area should find his record of detention but will find that he was released and not charged and there was no follow up action against the appellant or members of his immediate family. That should satisfy the authorities that the appellant is not of any interest to them and he would be able to go free."

10. In other words, there would be nothing on any computer system regarding this appellant because there was nothing to find beyond the fact that he had been released and not charged.

11. It accordingly follows that there was no material error of law in Judge O'Garro's decision, and this appeal must be dismissed.

Decision

There being no material error of law in the decision of the First-tier Tribunal, this appeal is dismissed.

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:



Upper Tribunal Judge Craig
2018

Date: 30 April