Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number PA/10423/2016

THE IMMIGRATION ACTS

Heard at Newport
On 23rd February 2018

Decision and Reasons Promulgated
On 6th March 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

MURAT OZKULLUK
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss E Fitzsimmons (Counsel, instructed by Hoole & co, Solicitors)
For the Respondent: Mr I Richards (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant is a citizen of Turkey. He arrived in the UK in 2005 on a visit visa and after an application for an extension was refused remained without leave making further unsuccessful applications. The application for asylum was made on the 12th of August 2015 and refused with no right of appeal but further submissions were considered and refused leading to these proceedings.

2. The appeal was heard by First-tier Tribunal Judge Boyes at Newport on the 28th of March 2017 and dismissed in a decision promulgated on the 30th of March 2017. The Judge rejected the Appellant's claim to be a pacifist by conviction and found that the Appellant's objections to

performing military service in Turkey were not such that he could refuse to do so. The Judge had regard to the Appellant's immigration history, his delay in claiming and his previous use of a false identity. The Appellant was not assisted by article 8 of the ECHR.

3. The Appellant's application for permission to appeal to the Upper Tribunal made to the First-tier Tribunal was refused. The renewed application was made to the Upper Tribunal and considered by Upper Tribunal Judge Gleeson who granted permission on the 15th of September 2017.

4. In the grant of permission Judge Gleeson found that it was arguable that the First-tier Tribunal Judge's findings on credibility were arguably flawed. This was having regard to the Appellant's claim that he had raised the issue of military service in his 2009 application and that appropriate weight had not been given the uncle's witness statement. The Upper Tribunal Judge was hampered by the absence of Record of Proceedings.

5. The submissions made at the hearing are set out in the Record of Proceedings and referred to where relevant below. It was accepted that the central issue was the Appellant's credibility. The core findings were in paragraphs 26 to 28 of the decision. It was submitted that the Judge had not considered all the evidence, the Appellant could be a conscientious objector without being political. With regard to the Appellant's private life he had been here since he was 15 and the Judge had not considered the very significant obstacles to his return to Turkey.

6. The Home Office not surprisingly submitted that the decision was open to the Judge for the reasons given. All matters had been considered and reasons had been given for rejecting the Appellant's claims.

7. In assessing this decision I have had regard to the guidance of Burnett LJ in EA v SSHD [2017] EWCA Civ 10 at paragraph 27 he made the following observations: "Decisions of tribunals should not become formulaic and rarely benefit from copious citation of authority. Arguments that reduce to the proposition that the F-tT has failed to mention dicta from a series of cases in the Court of Appeal or elsewhere will rarely prosper. Similarly, as Lord Hoffmann said in Piglowska v Piglowski [1999] 1 WLR 1360, 1372, "reasons should be read on the assumption that, unless he has demonstrated the contrary, the judge knew how he should perform his functions and which matters he should take into account". He added that an "appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which enables them to claim that he misdirected himself". Moreover, some principles are so firmly embedded in judicial thinking that they do not need to be recited. For example, it would be surprising to see in every civil judgment a paragraph dealing with the burden and standard of proof; or in every running down action a treatise, however short, on the law of negligence. That said, the reader of any judicial decision must be reassured from its content that the court or tribunal has applied the correct legal test to any question it is deciding."

8. The Judge accepted that the Appellant faced military service in Turkey and properly focussed on the Appellant's stated objections to having undertake it. In considering the Appellant's case the Judge had regard to the case of Sepet and another [2003] and addressed whether the Appellant would be required to take action against Kurds as part of military service. Whilst it is right to observe that political activism is not a requirement to show conscientious objection the Judge was clearly looking for evidence that supported the claim in a wider sense. Paragraph 28 is not contradictory and the Judge himself noted that the Appellant's political activities or lack of them were not central to the issue he was deciding.

9. There was no evidence to show that the Appellant had mentioned to the Home Office in 2009 that he was facing call up in Turkey. Even if he had known then that he was facing call up that did not explain why it was not raised by him as a basis for claiming asylum outright either at that time or at any time between 2009 and the further submissions being made. The Judge was obliged to consider the delay and it cannot be said that the Judge placed undue weight on the issue. The Appellant's preference to obtain and use false identity documentation also counted against him and there can be no complaint that his actions were considered in that light.

10. On the evidence that was presented to the First-tier Tribunal the Judge was entitled to find that the Appellant had not shown that he was a conscientious objector to military service and the case law meant that the Appellant had not established that he could not be expected to return to Turkey or that he was entitled to international protection on any basis.

11. With regard to the Appellant's human rights claim the Judge considered the Appellant's immigration history. Having entered in 2005 at the age of 15 he turned 18 in 2008 and so had spent a considerable amount of time in the UK illegally as an adult. The Judge's consideration of this aspect in paragraphs 41 and 42 was brief but the Appellant has not pointed to factors that would impede his reintegration to Turkey, family support is not an essential matter for integration although it may make matters easier, the Appellant could move to a welsh speaking part of Wales if he chose, he would face linguistic issues and need accommodation and employment but those are the ordinary incidents of relocation.

12. The decision being brief is not an error. The important point is that the decision explained why the Appellant's claim was rejected and that the reasons given were sufficient and open to the Judge on the evidence available. It is not necessary for a Judge to consider each and every point raised or every piece of evidence presented, the decision should be read as a whole and from the starting point that the Judge knew what he was doing and whilst the Judge might have put more into this decision and in doing so avoided the challenge being considered in this decision it cannot be said that he erred in the approach or the findings made.

CONCLUSIONS

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

Fee Award

In dismissing this appeal I make no fee award.

Signed:

Deputy Judge of the Upper Tribunal (IAC)

Dated: 2nd March 2018