



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12128/2017

THE IMMIGRATION ACTS

Heard at Field House
On 4 July 2018
Prepared 6 July 2018

Decision & Reasons Promulgated
On 13 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

AD
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Gherman, of Counsel, instructed by Virgo Solicitors
For the Respondent: Mrs N Willocks-Briscoe, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against a decision of Judge of the First-tier Tribunal Cohen who in a decision promulgated on 15 January 2018 dismissed his appeal against a decision of the Secretary of State made on 1 December 2017 to refuse his claim for asylum.

2. The appellant is a citizen of Turkey born on 3 May 1986. He arrived in Britain on 30 April 2017, claiming asylum on arrival. He asserted that he had been involved with HDP and had been arrested and ill-treated after attending a demonstration on 15 June 2017 and detained for three days. The following year he had taken part in further demonstrations and been arrested on three further occasions and asked to become a spy. He reported once to the authorities before fleeing from Turkey. He asserted that he had received an arrest warrant from the authorities issued around 10 to 15 April. He also asserted that he had become a member of HDP since arriving in Britain.
3. In paragraphs 19 onwards of the decision the judge reviewed the evidence. He placed weight on discrepancies between what the appellant had said in the screening interview and at the substantive interview in that in his screening interview he had stated he had been detained for three or four days two years before, but had later claimed that he had been arrested on three further occasions in 2017. The judge found that that discrepancy went to the core of his case. The judge went on to say that before him the appellant has only stated that he had been detained on three occasions.
4. In his screening interview the judge said that he had said that he had not been involved with any political party, but later claimed that he had been involved with HDP since 2015.
5. The judge also said that the appellant had said, in the screening interview, that he feared both the Government and ISIS but denied saying that he had said that he feared ISIS on a later occasion. The judge placed weight on the fact that the appellant was not interviewed in Kurdish but in the Turkish language and stated that that was contrary to the majority of Kurdish asylum seekers from rural areas in Turkey. He said the appellant's knowledge of the party he supported was "basic in the extreme" and that when asked in his asylum interview about his claim he had said that he had been "doing politics", which again the judge considered to be vague. He stated that the appellant had given discrepant evidence regarding when HDP was founded and that he did not accept that the appellant would have joined the youth branch of HDP, as he claimed, given that he had been aged 29, when he had done so.
6. With regard to the appellant's involvement with the HDP the judge stated that the appellant had only produced a Kurdish Community Centre card in support of his claim. He did not accept the appellant's claim that he would have been pressurised to become a spy given that he knew so little about his party.
7. Because of these discrepancies the judge did not find the appellant's claim to be credible and found indeed that he would be of no interest to the authorities if he returned. He therefore dismissed the appeal.
8. The grounds of appeal on which Miss Gherman relied argued that the appellant had explained why he had not mentioned all the detentions at the screening interview and that the judge had made findings without considering the appellant's cultural and

educational background. Moreover, it was pointed out that at the screening interview, although the appellant had stated “No” when asked about his political involvement, he had stated prior to that that he had been arrested while attending an HDP demonstration. It was argued that it was not open to the judge to find that the appellant was not politically active in Turkey. It was stated the judge was wrong to state that the appellant has changed his claim as he had said at interview that he feared the Government and had maintained this throughout the asylum application. He stated there was no basis on which the judge could place weight on the fact that the appellant was interviewed in Turkish as it was only the judge’s own assertion that asylum seekers from Kurdish areas had wished to be interviewed in Kurdish. It was stated that the judge had ignored the fact that there were restrictions on the Kurdish language and the dominance of the Turkish language within Turkey and its use in schools and therefore the judge had no basis on which to make that finding.

9. It was stated that the judge had ignored the knowledge that the appellant had shown at interview of the party he supported. There was nothing really to show that the knowledge had had shown was basic as the judge had stated, although the appellant had made one error when referring to his party, that had been explained in his appeal statement. There was nothing moreover to show that the appellant’s claim to have been involved in the youth wing of the HDP was implausible. It was stated that the judge had ignored background evidence regarding the arrest and torture of Kurds, and moreover it was argued that his finding that the appellant would not face detention in Turkey was unsubstantiated.
10. In her oral submissions Miss Gherman argued the judge had given inadequate reasons for his conclusions. She took me to the screening interview pointing out that the answers to the questions of whether or not the appellant had understood the questions asked and if there was anything he would like to ask, add or change were not completed. She asserted to me (and Ms Willocks-Briscoe was unable to gainsay) that the interview had taken place over the telephone. Moreover, she pointed to the fact that the appellant had given detailed answers in the substantive interview about his party and the leaders thereof and that he had clearly denied having stated that he feared ISIS at the screening interview. Moreover, she pointed out that at the substantive interview the appellant had stated that he had said in the screening interview that he had been involved in politics. Moreover many sections of the screening interview were left blank. She added that there was nothing to show that the appellant would not be able to speak Turkish, given that that was the language in which he would have been educated. Notwithstanding the fact that he would have been educated in Turkish she went on to point out that the appellant came from a low educational background and that would have impacted on his ability to give detailed explanations when interviewed. Again she stated that there was no obligation on the appellant to produce evidence in support of his claim and that there was an explanation as to why he had not produced the arrest warrant.
11. In reply Miss Willocks-Briscoe stated that the language issue did not affect the appellant’s case, and moreover she argued that the judge was entitled to place weight

on discrepancies between the two interviews. The reality was that there was a five month gap and the judge was entitled to believe that the appellant would have had time to elaborate his claim before the substantive interview. She stated that indeed at the screening interview the appellant appeared to have no knowledge of HDP. She argued that the grounds of appeal did not look at the totality of the evidence, but instead if that exercise were undertaken then the conclusions of the judge were fully open to him. It was for the appellant to produce evidence rather than for the judge to speculate as to what had happened and the judge was correct not to do so. The issue was in fact one of credibility and the judge had reached conclusions which were fully open to him.

Discussion

12. I have decided to set aside the decision of the judge in the First-tier Tribunal. It has been alleged before me that the appellant was interviewed over the telephone. Miss Willocks-Briscoe was unable to say that that was not the case. It is surprising that had happened, but as that was put forward by the appellant's Counsel and has not been contradicted, I have had to work on the basis that in fact the appellant was interviewed on the telephone, notwithstanding that my understanding is that the screening interviews takes place when asylum is claimed in person.
13. There are significant difficulties with the screening interview and in particular the fact that it is not signed and it does not appear that the appellant was asked whether or not he understood the questions or if he had anything further to add. I consider that the judge in these circumstances placed undue weight on the discrepancies between what was said in the screening interview and what was said at the substantive interview.
14. In any event I consider the judge made a number of findings which were unsustainable. I consider that the judge gave no reasoning for his conclusion that the appellant appeared to know little about the HDP when I consider the substantive answers he gave regarding the senior personnel in the party. Moreover the judge does not appear to engage with the background documentation with regard to the treatment of HDP members in Turkey.
15. I consider that for these reasons the judge's conclusions are not sustainable and on that basis I set aside the judgment in this case.
16. I consider that there needs to be a detailed analysis of the appellant's evidence and in these circumstances it would be appropriate for the appeal to be remitted to the First-tier Tribunal for a further hearing afresh on all issues.
17. I would emphasise that the Secretary of State must be able to make it clear whether or not the appellant did attend his screening interview or whether it was, as alleged, conducted over the telephone. Moreover it is for the appellant to produce further evidence regarding demonstrations which he claims to have attended.

Decision

The appeal is remitted to the First-tier Tribunal for hearing afresh.

Directions

- (1) Within 28 days the Secretary of State will inform the Tribunal of further details of the screening interview and whether or not, as alleged, it took place over the telephone.
- (2) The appellant will produce a bundle of documents and a skeleton argument which must be cross-referenced to the bundle of documents detailing any background evidence on which the appellant wishes to rely.

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:
Deputy Upper Tribunal Judge McGeachy

Date: 11 July 2018