



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

Appeal Number: PA/04478/2019

THE IMMIGRATION ACTS

**Heard at Field House
Oral decision given following
hearing
On 27 January 2020**

Decision & Reasons Promulgated

On 13 May 2020

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

**MS F
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Chowdhury, Counsel, instructed by Stuart & Co Solicitors

For the Respondent: Ms S Jones, Senior Home Office Presenting Officer

DECISION AND REASONS

This is a protection claim which also involves young children. For these reasons it is appropriate that the proceedings are anonymised and I so order. I will be remitting this appeal back to the First-tier Tribunal for the reasons which will appear below, and in the event that the appellant ultimately were to lose her appeal, unless the appeal is anonymised, the fact that her name has been published alongside her claim to be a supporter of a separatist organisation could be sufficient of itself to place her at risk.

The appellant is a Turkish national of Kurdish ethnicity who now appeals against a decision of First-tier Tribunal Judge Rai, who, following a hearing at Taylor House on 12 June 2019, in a Decision and Reasons promulgated some three months later on 18 September 2019, dismissed her appeal against the respondent's decision, refusing her asylum. The judge also dismissed her appeal on human rights grounds.

The appellant arrived in the UK in February 2013 and claimed asylum in that year on the basis of her imputed political opinion, her husband having been accused of involvement with the PKK. Her original asylum claim was refused and although the appellant lodged an appeal against that decision that appeal was withdrawn and her appeal rights were exhausted in November 2015.

The appellant made further submissions in May 2018 and it was against the refusal of these submissions that the appellant appealed and this is the subject of her current appeal to this Tribunal.

It is not necessary for the purposes of this decision to do more than briefly summarise the outline of the appellant's claim. Essentially, she claims to be at risk because she has been (on her case) arrested and detained by reason essentially of members of her family's involvement with separatist organisations in Turkey. Her claim is that she was detained on two occasions and during that detention she was subject to torture and was also raped. Obviously, the allegations she makes are extremely serious.

The appellant has four children, two of whom were born in the UK. The oldest of the two children born in the UK is now nearly 7 years old and will be 7 in March at which time that child will be a "qualified" child for the purposes of the Immigration Rules and also for the purposes of Section 117B(6) of the Nationality, Immigration and Asylum Act 2002. However, at present that child is not a qualified child.

The appellant's claim is that she would be at risk on return because the Turkish authorities would continue to have an interest in her essentially because of her family connection.

In her decision refusing the appellant's appeal, among other matters Judge Rai made adverse credibility findings, as follows, at paragraph 44 of her decision:

"44. I do not find the core of the appellant's claim to be truthful. I am not satisfied the Gendarme would single the appellant out and detain her twice when she had no political profile and cannot state why as mere supporters of the HDP they would come to the authorities' attention".

The judge went on to say with regard to this finding that "there was no evidence before me of distributing leaflets, or engaging in any demonstrations such that she would come to the attention of the authorities. It follows that I do not find it reasonably likely that she was required to report weekly".

Having found the appellant's account not credible, the judge rejected her claim for asylum and under Article 3 and this was a factor in her Article 8 claim also; had the account given by the appellant been true (or arguably true) this would have had to be considered also in the context of whether there were very significant obstacles to the appellant returning, with her four young children, to Turkey.

At paragraph 20 of her decision, the judge notes as follows:

"20. The grounds state that the defendant committed a material error of law by failing to engage with the country guidance of *IA HC KD RO HG (Risk - Guidelines - Separatist) Turkey CG* [2003] UKIAT 00034 and in particular whether the appellant has family connections with a separatist organisation such as KADEK or HADEP or DEHAP. As a result, the respondent has failed to exercise 'most anxious scrutiny' in the assessment of her claim".

In other words, the judge was well aware that the major issue in this case was whether or not by reason of the activities of the appellant's family the Turkish authorities would have an interest in her on return and as part of her claim that it was for this reason that they had an interest in her which caused them to detain her, during which detention she suffered in the way that she had stated as part of her claim.

This is the context in which the judge's finding, set out above, made at paragraph 44 is challenged. Although the one finding that the "core of the appellant's claim to be truthful" is not accepted, the judge does not set out whether any, and if so what, parts of the claim might be truthful. It is simply a blanket finding that "the core" of the claim is not truthful. The sole reason for that finding is set out in that one sentence that the judge is "not satisfied the Gendarme would single the appellant out and detain her twice when she had no political profile and cannot state why as mere supporters of the HDP they would come to the authorities' attention". What is significant about the finding is that despite the judge having set out previously that one of the issues was whether or not there had been a failure to engage with albeit old but nevertheless still current country guidance given in *IA and Others*, the 2003 case, the judge does not consider that country guidance at all.

In the grounds, at paragraph 2.1, under "*Error 2 - Failure to appreciate assess sufficiency of protection*", it is said as follows with regard to the country guidance decision in *IA and Others*:

"In para 46 of the country guidance case above, the Tribunal outlined the factors which are inexhaustively considered 'to be **material** in giving rise to potential suspicion in the minds of the authorities concerning a particular claimant'. Those include:

...

- f) **Whether the appellant has family connections with a separatist organisation such as KADEK or HADEP or DEHAP** (p.20). As a result, the defendant failed to sufficiently take into account a relevant consideration in the assessment of the appellant's asylum and human rights case which evidences a

failure to exercise 'most anxious scrutiny' in the assessment of his claim".

The judge does make the point in her decision that within the bundle itself there is lacking any precise details of the reasons why certain members of the appellant's family had been granted asylum, and in particular in the case of a cousin, although a decision is exhibited granting that lady asylum in January 2015, the reasons why the respondent granted that lady asylum were not enclosed within the bundle.

On behalf of the respondent before this Tribunal, Ms Jones suggested that the "starting point" in this appeal ought to be the rejection of the appellant's husband's claim in 2003, because this appellant's claim was in large part dependent on that claim. However, on behalf of the appellant, Ms Chowdhury fairly points out that this decision proceeded by a number of years the alleged detention of this appellant some nine or ten years later, on which the claim is really based. She also submits, with some justification, that it was incumbent on the judge before rejecting the claim that she had been detained to explain why it was that she felt able to reach this decision apparently ignoring the guidance given in the very old country guidance case that one reason why the Turkish authorities would or might consider a person with suspicion is that that person had family connections with a separatist organisation, which arguably this appellant did.

I appreciate, as was submitted on behalf of the respondent also by Ms Jones, that the evidence in support of the assertions as to the involvement of members of the appellant's family are not as strong as they could have been, but it certainly does seem at the very least that members of the appellant's family have been granted asylum in this country and in those circumstances, although this may well be a finely balanced case, this Tribunal considers that the judge ought at the very least to have considered this claim in the context of the country guidance decision which was still current, albeit that it was old, especially as she appreciated, as she makes clear at paragraph 20 of her decision, that this was an issue which was being taken within this appeal.

It follows that in the view of this Tribunal this decision did contain a material error of law, being the failure to have regard to the appellant's case in the context of current country guidance relating to Turkey (which was the main reason why Judge Holmes considered it right to grant permission to appeal) and the decision will accordingly have to be remade.

Because the findings with regard to credibility cannot be sustained, and these findings formed the basis of the decision, it will be necessary to have a completely fresh hearing with no findings of fact retained, and in those circumstances, it is agreed on behalf of both parties that it is appropriate to remit this case back to the First-tier Tribunal, to be reheard by any judge other than Judge Rai, at Taylor House with no findings of fact retained.

I accordingly make the following decision:

Decision

The decision of First-tier Tribunal Judge Rai, dismissing the appellant's appeal on asylum and human rights grounds, is dismissed as containing a material error of law.

The appeal will be remitted for rehearing at Taylor House, by any judge other than First-tier Tribunal Judge Rai.

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 her or any member of her 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:

A handwritten signature in black ink, appearing to read "Ken Craig", is written over a light blue rectangular background.

Upper Tribunal Judge Craig
2020

Dated: 18 March