



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003417
First-tier Tribunal No:
PA/00031/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 05 September 2023

Before

UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE BLACK

Between

YG
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs M Thirumaney, Solicitor, instructed by Shervins Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

Heard at Field House on 22 August 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

(extempore)

1. This is an appeal by a citizen of Turkey against a decision of the First-tier Tribunal dismissing his appeal against a decision of the Secretary of State refusing him international protection.
2. There are several matters of concern raised in the grounds of appeal but one of them should not have been raised; there was a suggestion that the judge had closed his mind to the evidence and was not amenable to persuasion. Whether that was quite what was intended is not plain but it was made plain in a notice served on the Tribunal before the hearing that any suggestion of that kind was disavowed. It was not the appellant's case that the judge had closed his mind and would not listen. I have had an opportunity of listening to a recording of the hearing and any suggestion that the judge was disinterested is just unsustainable and I am very glad that the suggestion to the contrary was not relied on before us because it was not justified.
3. Other criticisms however are justified although not necessarily indicative of material errors of law.
4. One is that a witness who we identify as "MG" gave evidence and this was noted in the Decision and Reasons but no comment was made on the evidence that he gave. We have read the witness statement; it may be that the evidence was of little probative value but it was unfortunate that no findings at all were made on it or no explanation given for not making findings.
5. Of much greater concern is the judge's apparent failure to engage with the background evidence. Particularly troubling is paragraph 25 of the Decision and Reasons where the judge found it inherently unlikely that a person such as the appellant would be associated with the PKK simply because he distributed food parcels on one occasion and put up posters on another occasion. The judge says that he did not see how either of these activities could lead to the appellant being suspected of PKK activity. The background material should have informed him. The relevant points were drawn out in the skeleton argument and repeated in the evidence before the First-tier Tribunal Judge. These are quotations from the CPIN Report. The evidence is neither obscure nor of dubious quality.
6. Of course, it does not follow at all that everybody who does anything that might annoy the Turkish state is telling the truth when they say they have been caught and have annoyed the Turkish state but one of the reasons given by the judge for disbelieving the appellant's evidence is that parts of his story were, in the judge's mind, inherently unbelievable and we just do not know how he reached that conclusion in the light of the evidence that was before him.
7. There is an associated point, which Ms Everett regarded as of still greater concern, and we certainly do not disagree that it is a matter of concern, namely that the judge seemed to think that because the HDP (Halkların Demokratik Partisi or Peoples' Democratic Party) had, to use the judge's word, "evolved" into a major political party that somehow gave immunity to its members from improper acts by the Turkish state. It is not that simple. Yes, there is evidence that the party has evolved; it has become bigger and is a major player but there is also evidence that at least some of its activists are sometimes at risk and the judge's implied reasoning that it simply could not be the case that a supporter of a major political party risked persecution is just not right.
8. We find, and indeed Ms Everett properly agrees, that these deficiencies undermine the decision as a whole, and this is not a case that is amenable to repair by the Upper Tribunal. We wish to make it plain that we are not in any way indicating how this appeal should be resolved. There are other points made to

the detriment of the appellant that may have merit, but as a whole we find the reasoning is unsustainable.

Notice of Decision

9. We set aside the decision of the First-tier Tribunal and direct that the case be heard again in the First-tier Tribunal.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

30 August 2023