



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004455
First-tier Tribunal Nos:
PA/50417/2021
IA/03602/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 08 November 2023

Before

UPPER TRIBUNAL JUDGE OWENS

Between

ST
(ANONYMITY ORDER MADE)

and

The Secretary of State for the Home Department

Appellant

Respondent

Representation:

For the Appellant: Mrs Degirmenci, Montague Solicitors
For the Respondent: Mr N Wain, Home Office Presenting Officer

Heard at Field House on 4 August 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and any member of his family are 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 or his family. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Bart-Stewart sent on 20 June 2022, dismissing the appellant's appeal

against the decision made by the Secretary of State on 18 January 2021 refusing his protection and human rights claim.

2. The appellant is a national of Turkey born in March 1986. He claimed asylum on 12 October 2017. It is the appellant's case that he is at risk of persecution from the Turkish authorities on account of his perceived links to the Peoples' Democratic Party ("HDP") and the Kurdistan Workers Party ("PKK"). The appellant claims that his father and two of his brothers were involved with the HDP to defend Kurdish rights. One brother is in prison having been accused of involvement with the Gülen Movement, and a second brother was detained in 2014 and afterwards went to join an armed movement in Syria. His paternal uncle was a high-ranking member of the PKK, who was killed by the authorities in 1988. The appellant carried out activities for HDP. He was detained on three occasions during which he was subjected to ill-treatment and questioned about being involved with the PKK. He has also been involved in pro-Kurdish political activity in the United Kingdom. He asserts that he is at risk on return to Turkey in accordance with IK v the Secretary of State for the Home Department [2005] UKIAT 000312.
3. The respondent accepts that the appellant is of Kurdish origin and that he has taken part in pro-Kurdish activities in the United Kingdom. The respondent does not accept that he was a member of HDP, that he was detained or that he is of interest to the Turkish authorities either by virtue of his political support for HDP, as a perceived supporter of the PKK or by virtue of his family's profile.

The Decision of the Judge

4. The judge found that the appellant was detained on 7 October 2014, having been stopped at a checkpoint after attending a political protest in his local area. The judge also accepted that the appellant was detained in 2015 during election time when after reporting an irregularity in the voting procedures and that he was asked why he was supporting parties that have links with the PKK. The judge considered the appellant's accounts of these detentions to be consistent and plausible. The judge did not accept that the appellant was detained in September 2017.
5. On this basis the judge did not find that the appellant was required to report to the Turkish authorities nor that they had any interest in him when he left Turkey.
6. The judge then found that the appellant is not at risk in Turkey due to his family name, nor because of his political profile in the UK. The judge did not accept that the authorities have been to the appellant's home expressing an interest in him. The judge then applied IK and concluded that there was no evidence that the authorities had any specific information linking him personally to the PKK. The judge concluded that the appellant does not have a "material history" and therefore the information about him would not have been collated or retained by the local Turkish authorities. There would be no record of his earlier detentions. He is not a person of adverse interest in his home area. On return to Turkey, he will be identifiable as a failed asylum seeker and sent to the airport police station. There is no arrest warrant. Any enquiries to his local area will show there is nothing on record since 2015. He does not stand out and can safely return to his home area.

The Grounds of Appeal

7. There are four main grounds of appeal.

Ground 1

8. Failure to reach findings in respect of core aspects of the appellant's case.

It is submitted that the judge failed to reach findings on the following aspects:

- (a) Whether the appellant was a member or supporter of HDP.
- (b) Whether the appellant's siblings were politically involved as claimed and whether they had problems with the authorities.

It is submitted that both of these factors would be factors identified in IK relevant to the assessment of risk on return. Further, the judge failed to take into account or analyse the documentary evidence in support of the appellant's case, namely a letter from HDP and a letter from the local village mukhtar corroborating his claim. The judge also failed to take into account the evidence of the two witnesses called in support of the appellant's appeal and failed to make findings on their evidence.

Ground 2

9. Failure to give adequate reasons.

It is submitted that the judge failed to give any or adequate reasons for her finding that the appellant's first and second detention did not amount to persecution. The judge failed to give adequate reasons for her finding at [41] that it was not reasonably likely that someone with such close links to the PKK would be released so quickly after being detained a third time. There were no adequate reasons given for the finding that the appellant had little "material history" in his home area.

Ground 3

10. Error of fact in respect of material aspects of the appellant's case/failure to take into account material evidence.

The judge failed to take into account that the appellant and the witnesses all gave evidence that the whole family had come under pressure because of the appellant's uncle's role with the PKK. The judge erred in finding that there were inconsistencies between the appellant's oral evidence and his witness statement regarding the timing of his departure. The judge's failed to take into account that the appellant was taking antidepressant medication. The judge misunderstood the submission on "unofficial" detention. There would be official records of the earlier detentions because his photographs and fingerprints were taken. The judge's conclusion that the surname Turan is a common surname is pure supposition.

Ground 4

11. Error in assessing the risk on return.

The judge failed to assess the risk to the appellant with reference to the current country background evidence. The judge failed to have regard to the fact that the security/human rights situation in Turkey has deteriorated post 2015.

Rule 24 response.

12. There was no rule 24 response, but Mr Wain indicated that the respondent opposes the appeal.

Analysis and Discussion

13. Mrs Demirmenci's overall submission was that the judge did not make findings on core issues, that some of the findings she did make were flawed by a lack of adequate reasoning or not in line with background evidence and that she also failed to take some of the supporting evidence into account such as the letter from the village mukhtar. These core findings relate directly to the appellant's profile and the risk that he would face of serious harm on return. The country guidance is that an individual returned to Turkey on a one-way travel document will be pulled aside and questioned at the airport. That individual would not go through normal immigration control. He would be flagged up as a returned asylum seeker and would be questioned by the police. It is only at that stage, if the police had any reason to make further enquiries, that the appellant would be taken to the anti-terror branch where there would be a real risk of persecution.
14. Mr Wain's submission is that from reading the decision as a whole it is clear that the judge took into account all of the evidence before her. It is implicit in the decision that the judge did not accept the appellant's evidence because there are some serious negative credibility issues. The judge was entitled to make negative credibility findings because of the problematic evidence in relation to the arrest warrant. The appellant initially stated the arrest warrant had been sent to the United Kingdom and was waiting to be translated and forwarded to the Home Office and then the appellant admitted that it did not exist. The findings were adequately reasoned. It is clear that the judge did not accept that the appellant would be at risk because of his family profile, his previous detentions nor because of his activities in the UK. The judge directed herself correctly to IA and others (Risk-Guidelines-Separatist) [2003] UKIAT00034.
15. In general, I take into account that an appeal court should be slow to interfere with a decision of the First-tier Tribunal not least because the judge making the decision had the benefit of considering the sea of evidence before her including hearing the evidence of the witnesses. A decision does not need to be perfectly expressed and does not need to recite all of the evidence that has been considered.

Ground 1

16. The appellant's evidence was that he came from a village in a Kurdish area in Turkey. His main language was Kurdish Kurmanji. He said that he came from a family of HDP supporters and that he had been a member of HDP since 2014 and was involved in attending meetings, leafleting and putting up posters. He also frequently attended demonstrations. His father supported the PKK and his uncle was a prominent PKK member who was killed in 1988. He said his village supported the PKK. He displayed a good knowledge of the party in his asylum

interview and his evidence was that two of his brothers had also been arrested by the Turkish authorities. He claimed to have been detained and tortured on three occasions, questioned about his ties to the PKK and that the authorities had been looking for him.

17. It was agreed that the judge needed to decide whether the appellant was a member of HDP and whether he had carried out political activities in Turkey, whether he had been subject to past persecution, if he is currently of interest to the authorities and ultimately if he is at risk on return because he falls under any of the risk profiles set out at IK which is the most recent Country Guidance.
18. Mrs Demirmenci submitted that the judge failed to make any clear finding whether the appellant was either an HDP member or supporter. She asserts that it is potentially implicit at [37] that the judge accepts that the appellant was a member of HDP but if the judge has accepted this, this finding is not filtered back into the assessment of his profile. There was evidence in the appellant's bundles referred to in the skeleton argument that both HDP members and supporters are considered to support the PKK and could be at risk on that basis.
19. Mr Wain submitted that the judge had not explicitly made a finding as to whether the appellant was a member or supporter of HDP, but he submitted that it was clear from an overall reading of the decision that this is not accepted because of the appellant's lack of overall credibility. At [47] there is an indication that the judge did not accept that the appellant was a member of HDP. Mr Wain conceded that it was difficult to tell from the decision whether the judge accepted that the appellant was an HDP supporter.
20. Having read the decision carefully, I am satisfied that the judge has failed to make a discrete finding as to whether the appellant was an HDP member or supporter and that this was a core aspect of his claim. This was one of the key issues agreed during the case management process that needed to be determined as set out in the respondent's review and at the agreed issues section at [18] of the decision. It is really not clear from the decision what the judge's finding is on this. It is manifest that the judge made a positive credibility finding regarding the first two detentions at [38] but a negative finding on the third detention at [44]. This is in complete contrast to the lack of a discrete finding on the appellant's political affiliations and activities in Turkey. When the judge comes to consider the risk to the appellant on return, she does not factor in at all her finding on the level, if any, of the appellant's known or suspected involvement with the HDP which has been perceived to be linked to the PKK nor whether the appellant has any family connections with a separatist organisation. I agree with Mrs Degirmenci that this had been identified as an agreed issue which needed to be resolved and that this has not been resolved which is an error of law. This is also important in the context of the background evidence in the CPIN referred to in the skeleton argument that the Turkish government sees a link between HDP and PKK, large numbers of low-level members of HDP have been arrested and detained and that there had been a surge in the number of torture allegations after the coup in 2016.
21. I am also satisfied that the judge has made no clear findings as to whether she accepts that both of the appellant's brothers had significant profiles. The appellant's evidence was that one of his brothers was detained shortly after him in 2015 and after being held for several weeks, left the country to join a military group in Syria and that his second brother was given a seven-year prison sentence, having attended a Gülenist institution. Again, Mrs Degirmenci asserted

that it was potentially implicitly accepted at [41] and [53] that the judge had accepted this evidence, but it was not clear how this was fed into the assessment of risk.

22. Mr Wain submitted that at [41] the judge is merely setting out the appellant's evidence and that this does not constitute a positive finding and similarly the reference to the second brother fighting in Syria did not amount to a positive finding. I agree that at [41] the judge appears setting out the appellant's case and that at [53] there is no mention of the second brother who is alleged to be detained in Turkey.
23. On this basis, I am also in agreement that the judge has failed to make specific findings as to whether the appellant's brother was imprisoned in Turkey for suspected anti-establishment activities and whether his second brother has joined a Syrian militant group or indeed whether the judge accepted that the appellant's uncle was a prominent PKK member who was killed in 1988 by the Turkish authorities and that his aunt was afforded refugee status in the United Kingdom as a result. The judge does not make a finding as to whether the appellant's cousin was granted Refugee Status in 2007 for similar reasons. There is no indication as to whether the judge accepted any of these matters from the decision. The judge appears to have proceeded on the basis that the appellant has not experienced any problems as a result of his family's political background.
24. In this regard, it is not obvious from the decision what the judge made of the witnesses' evidence. The appellant's aunt gave evidence that the entire family suffered persecution and pressure by the authorities because of their historic connection with the PKK. Her husband and another cousin were high ranking members. Their name is known in their local area. Her evidence was that she knew that the appellant was detained before he came to the United Kingdom. She had been informed by the appellant's mother that the authorities are looking for him. The appellant's cousin, who came to the United Kingdom in 2007 also stated that because of the family connection with pro-Kurdish politics the family is known by the authorities in Turkey and has been targeted. Mr Wain submitted that the judge did consider the evidence of the witnesses which were summarised at [26] and [29]. He submitted that it is clear from reading the decision that the judge rejected this evidence.
25. I am not in agreement with Mr Wain. The judge does not explain what she made of this evidence and if she meant to reject it, she did not provide any reasons for doing so. Both witnesses' evidence went to the fact that the appellant had been detained and was wanted by the authorities and also to the fact that the family are considered to be pro-Kurdish in their local area and had come under pressure. In particular, the cousin gave evidence that he knew that the appellant was asked to be an informer. His evidence was that he was very close to his cousin and spoke to him on a very regular basis. There was also evidence from a local mukhtar that the appellant's family home had been raided.
26. I am satisfied that the failure to deal with the evidence of the supporting witness was an error on the part of the judge, as was the failure to make findings on whether the appellant's family members had come to the attention of the authorities.
27. Mrs Degirmenci submitted that this is relevant because at the second stage of questioning, IK says that the police will make checks in the local area. She stated that this would reveal that the appellant had been arrested and detained twice on

the judge's own accepted facts, had been questioned about the PKK, had been subject to ill-treatment and has a brother who was serving a five-to-seven-year sentence as a Gülenist as well as another brother who had left Turkey to go and fight in Syria. It was crucial that the judge made a concrete finding as to whether this profile existed or not to examine the risk. I am in agreement with her.

28. In my view, the primary task of the First-tier Tribunal is to find facts and in this decision the judge has failed to resolve the conflict in the evidence and make findings on issues that were agreed by both parties as being important to the outcome of the appeal.
29. In my view the failure to make these findings undermines the judge's assessment of risk and is material to the outcome of the appeal.

Ground 2 Failure to Give Reasons/ Inadequate reasons

30. Mrs Degirmenci submitted that the judge's finding that the appellant was not individually targeted was inadequately reasoned. The judge found that the appellant was not individually targeted because the two detentions that she accepted, in her view took place against the backdrop of local protests and elections. Ms Degirmenci stated that the judge's reasoning was flawed in respect of the second detention because the appellant's evidence was that he was personally targeted when he tried to report a voting irregularity. He was picked up by the gendarmes. She also pointed to the appellant's evidence that in both detentions, he was asked about his family background, his close family members and that he was accused of being involved with the PKK and the judge accepted this. I am in agreement that it is difficult to understand the judge's reasoning that the appellant was not individually targeted from his evidence that the gendarme came specifically to arrest him and her seeming acceptance that specific allegations were made against him during his detentions.
31. It is further submitted that the judge has given inadequate reasons at [38] why these detentions and ill-treatment did not amount to persecution. The appellant's evidence was that he was detained on the first occasion in a political context having attended a protest. His evidence was that he was questioned about his political activities and severely ill-treated. His account was that he was severely beaten, subject to hanging by his arms and pressurised cold-water torture and falaka. During the second detention, which the appellant describes at paragraph 28 to 34 of his statement, he also claimed to be interrogated about his political activities, his brother and questioned about his involvement with the PKK. He claims to have been beaten. His evidence was that the detention was again politically motivated. The judge found at [38] that the appellant's account including his account of ill-treatment was consistent and plausible. The judge then went on to find that this was not persecution because the detentions were "isolated incidents" and not "part of a pattern or evidence of targeting". It is submitted that this reasoning was flawed because the appellant was subject to inhuman and degrading treatment for a Convention reason and the treatment met the threshold of severity.
32. The definition of persecution as set out in Article 1A(2) of the Refugee Convention is confirmed at s31 of the Nationality and Borders Act 2022. This states that an act of persecution must be sufficiently serious by its nature or repetition as to constitute a severe violation of a basic human right and may take

the form of an act of physical or mental violence. I find that one action or incident which is sufficiently serious can constitute an act of persecution. I am in agreement that the judge's reasoning is flawed in this respect. The judge appears to have accepted the appellant's account. The appellant's account is very detailed, and it is manifest that these detentions took place in the context of political activity and that the treatment was severe including known methods of torture used by the Turkish authorities. I am satisfied that the judge has not adequately reasoned why this treatment does not amount to persecution and this finding has fed into the judge's ultimate finding that the appellant did not have a local political profile and was not taken into account in her assessment of future risk as a relevant factor.

33. The judge rejected the appellant's account of his third detention for four main reasons. Firstly, because the appellant failed to obtain supporting evidence that he attended hospital after he had been tortured when this evidence would have been easily available; secondly at [41] because "it is not reasonably likely" that he would have been released so quickly if he were suspected of close involvement with the PKK; thirdly because of general credibility concerns about his assertion that he was intending to submit an arrest warrant that he had given to his solicitor and then maintaining this fiction until he had no choice but to accept that there is no arrest warrant; and finally because there were inconsistencies in his evidence about how many times he reported at the police station after being released. Mr Wain's submission is the finding that the appellant was not detained for a third time was adequately reasoned and open to her on the evidence before her particularly in the light of the problematic issue of the court documents.
34. Mrs Degirmenci submitted that the judge's reasoning is flawed. It was speculative of the judge to find that the appellant would not have been released quickly if he were considered to have links to the PKK. In the background material, there is ample evidence that the Turkish authorities often detain people for short periods before asking them to become informers, which is the appellant's evidence. The appellant's evidence was consistent with the background material which was contained in the appellant's own CPIN.
35. It was also irrational for the judge not to have applied this reasoning to the first and second detentions when the judge had already accepted that the appellant was only detained briefly but it was accepted that on those occasions he was questioned about his activities for the PKK.
36. I find that it was an error of the judge to speculate how the Turkish authorities would have behaved in any given set of circumstances and that the judge does not appear to have considered the account in the light of the background evidence which is that short detentions take place and that individuals are asked to become informants. I also accept that it is odd that the judge did not apply the same reasoning to the first and second detentions when the appellant's evidence was that he was questioned about the PKK on those occasions but also released quickly. I consider whether this error undermines the judge's finding that he third detention did not take place. The judge did give other sustainable reasons for rejecting the appellant's account of the third detention and ordinarily on its own I would not find the failure to take into account the background evidence and the speculative reasoning sufficient to make out the error of law in light of the additional reasons. However, when this error is placed in the wider context of the judge failing to make concrete findings on the appellant's support

or membership of HDP and the extent of his claimed activities against the background of the heightened tension in Turkey after 2016 (the detention was said to have taken place in 2017), I find that this error is material. I am satisfied that the judge erred by giving inadequate reasons for rejecting the appellant's account for his third detention.

37. Finally, it is submitted that the judge's finding that there was little "material history" in his local area is flawed and that it is not possible to understand the reasoning behind the judge's finding in this respect when it was accepted by the judge that he had been detained twice. The appellant's evidence was that he had been fingerprinted and photographed. He had given his personal details to the police. The judge addresses this issue at [55]. The judge states that the representatives submitted that there was unlikely to be any record of his earlier detentions as they were "unofficial". The judge then concludes that the appellant was not a person of adverse interest in his home area. I am satisfied that this is a misreading of the skeleton argument. It is asserted that the authorities in his home area will have a record of his detentions and his suspected support for HDP and PKK. It is also asserted that both in the CPIN and IK that it is accepted that the level of questioning will vary from individual to individual and that enquiries may be made to the local police. The judge does appear to accept that if local enquiries are made the previous two detentions will come up but that this will not be a problem because the last detention was in 2015. The problem is that the judge's analysis on the appellant's profile in his local area does not factor in the extent to which he supported HDP and his activities for HDP which comes back to Ground 1.
38. In my view the assessment of the risk to the appellant is flawed for these reasons. I do not go onto consider Ground 3 which to some extent is a repetition of the earlier grounds, but I do accept and note that the decision does not make reference to the strengthening of the anti-terror laws and the sensitivity to the position of perceived opponents of the Turkish regime which had increases since the coup in 2016.
39. I am satisfied that grounds 1 and 2 are made out for the reasons set out above and that they are material to the outcome to the appeal because it cannot be said that the decision would have inevitably been the same had the errors not been made. I therefore set the decision aside.

Disposal

40. Mrs Degirmenci submitted that the appeal should be remitted to the First-tier Tribunal for rehearing because of the evidence that has been overlooked and the extent of findings that need to be made. Mr Wain submitted that the appeal could be dealt with at the Upper Tribunal with some findings preserved. The normal course is for the appeal to be retained in the Upper Tribunal, however in this appeal the judge's failure to take into account some of the evidence and make findings on other parts of the evidence fed into the credibility findings which I find are undermined. I find that extensive factual findings need to be made and in these circumstances in the interests of fairness it is safer for the appeal to be reheard de novo.

Notice of Decision

- (1) The making of the decision of the First-tier Tribunal involved the making of an error of law.

- (2) The decision is set aside in its entirety with no findings preserved.
- (3) The appeal is remitted to the First-tier Tribunal to be heard by a judge other than Judge Bart-Stewart.

R J Owens

Judge of the Upper Tribunal
Immigration and Asylum Chamber

7 November 2023