



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023 002345
First-tier Tribunal No: HU/55653/2022
LH/00165/2023

THE IMMIGRATION ACT

Decision & Reasons Issued:

On 28th of November 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR C
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr E Terel HOPO.

For the Respondent: Ms E Daykin, Counsel, instructed by Gulsen and Co, Solicitors

Heard at Field House on 15 September 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the respondent and any member of her family or other person the Tribunal considers should not be identified is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the respondent, likely to lead members of the public to identify the respondent nor other person. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. This is the Secretary of State's appeal. For convenience, I will continue to refer to the parties as they were in the First-tier Tribunal.
2. The appellant is a national of Turkey, born in February 1973. He came to the United Kingdom on a visit Visa on 26 September 2018. He has a number of siblings here. He subsequently claimed protection, saying he was fearful of the Turkish authorities.
3. He gave a number of reasons. He is Kurdish and his family supported pro-Kurdish political groups and encountered difficulties from the authorities as a consequence. He was brought up in the Alevi faith, associated with the Shia branch of Islam. He no longer practices his religion. It brings him into conflict with the authorities. He is a teacher and his involvement with strike action and the trade union also brought him into conflict with the authorities.
4. He said when he came to the United Kingdom had not intended to claim protection. He did so following a telephone conversation with his wife after he arrived. She told him the authorities have been to their home looking for him on 5 December 2018 and were abusive towards her and their two daughters. He produced various documents in support of his claim.
5. This claim was refused by the respondent on 18 August 2022. The respondent accepted he was a low-level supporter of the HDP, which the Turkish authorities conflated with the prescribed PKK. He said he was also associated with the FTO, another organisation designated by the Turkish authorities as terrorist. However, it was not felt it was any interest to the authorities in Turkey as evidenced by the fact he was able to leave on his own passport. Furthermore, he had not been dismissed from his teaching post. Reference was made to the country guidance decision of IA and others (risk-guidelines-separatists) [2003] UKAIT with the view the appellant did not come within any of the risk categories.

The First tier Tribunal

6. His appeal was heard by First tier Tribunal Judge Colvin at Taylor House on 6 April 2023. He was represented, as was the respondent. His account was that he was detained for one day, the 29 December 2015, for taking part in a strike. Then on 15 July 2016 he was detained for three days and accused of being a member of the PKK. He was again detained on 13 August 2018.
7. Witnesses were called in support of his claim. One was his cousin. Another, his brother. They had been granted protection. Another was his father's cousin. Various documents were submitted in support of the claim, including WhatsApp messages from his wife. She referred to the police coming to their home and assaulting her and the children. There were also photographic images sent by telephone of injuries. There is also a letter from the Mukhtar.
8. The judge had regard to the country information indicating the Turkish authorities believe there is a link between the HDP and the PKK. Being an Alevi was considered a risk factor because of association with HDP.
9. The judge assessed the documentary evidence and decided that limited weight to be placed upon it. The identity of the individual in the photographs submitted

was not identified. The provenance of the letter said to be from the Muchtar was not known and aspects of it contradicted the appellant's account, such as the statement that he was forced to leave the country.

10. The judge also assessed the evidence of the witnesses called. Again, little weight was attached as they could not have had direct knowledge as they were out of Turkey and their evidence was hearsay. The judge acknowledged their evidence indicated the family had frequently been harassed by the police for many years and that family members had left the country and been granted asylum.
11. The judge commented on the absence of reference in a letter from a teachers union that he was a member or that he was arrested as claimed. Notwithstanding this, the judge was prepared to accept he may have been arrested along with other teachers, particularly as he was Kurdish and because of his family history.
12. The judge did not find his account of being detained for three days plausible. Emergency legislation authorised the mass dismissal of teachers in his home area suspected of support for the PKK and affiliated associations. The appellant had not been dismissed and rejected his suggested explanation.
13. The judge did not find the claim of being detained again in August 2018 credible. At that time operations were being conducted against suspected individuals. The appellant said his detention was due to taking part in the strike back in December 2015.
14. The judge attached some weight to the What's App messages from his wife, given the content of the exchanges and reference to the appellant's detention in December 2015.
15. The judge concluded by finding the appellant had been detained for a single day in December 2015 and was then released without charge. The judge did not find the further detentions claimed established. The judge accepted that the What's app messages did support the claim about the police coming to his home on two occasions, namely the fifth and 26 of December 2018. The judge did not find his abandonment of his religion created any adverse attention.
16. In summary, the judge took account of the multiple family members who have been recognised as refugees and that the appellant is Kurdish and a low-level supporter of the HDP. The judge accepted he took part in a strike in December 2015 and more recently the authorities have shown some interest in him by visiting his home twice in December 2018. In the context of the background information the judge found there existed a real risk for the appellant on return and allowed the appeal .

The Upper Tribunal.

17. Permission to appeal to the Upper Tribunal was granted by Upper Tribunal Judge Sheridan. It was arguable that the judge's rejection of his claim that he was detained in August 2018 is inconsistent with the acceptance they were trying to find him in December 2018.

18. At hearing Mr E Terel referred me to paragraph 41 of the judge's decision which sets out the relevant findings. Referred to paragraph 42 where the judge pointed out he had not been dismissed as a teacher. At paragraph 43-44 judge accepted the What's app messages about the police raid on 5 December 2018. He had been arrested for one day in December 2015 what the other detentions had been rejected as not plausible. With the claimed history Mr E Terel submitted it was not credible that the appellant could leave through airport security.
19. In reply, Ms Daykin referred me to the rule 24 response. She submitted the judge had correctly directed themselves and had provided reasons for the outcome. I was referred to the number of items that were accepted by the respondent and in particular the fact he was Kurdish. His religious upbringing and that he was a supporter of a party that the authorities would be hostile to were relevant. She also referred to the difficulties other family members have experienced and also the What's app messages. She submitted essentially the respondent disagreement was to the outcome. If I found an error of law she submitted that the matter should be considered de novo in the First-tier Tribunal at Taylor House.

Consideration

20. The respondent accepted important parts of the appellant's claim relevant to the risk assessment and the country guidance decision. Amongst the risk factors was being of the Alevi faith, family connections with opposition groups, being Kurdish and being arrested. In the refusal letter there was an acceptance that his profile made him potentially a target for the authorities. He said he was a teacher, another factor. He said he had been detained by the authorities on 29 December 2015, 16 July 2016 and 13 August 2018. The detentions were of short duration and there was no reporting requirement. The respondent suggested his ability to leave from the airport with its security checks indicated he was not of interest to the authorities.
21. The judge had a substantial amount of material to consider before the appeal commenced. The judge also heard from the appellant and several family members detailing their experiences. It was confirmed they had been granted refugee status. The judge also had photographs said to show injuries on the appellant's wife and daughter as well as What's app messages.
22. Before making findings the judge set out the guidance from caselaw on the assessment of evidence. At paragraph the judge makes the point that a witness may be found to be untruthful on aspects or to have exaggerated but that does not mean the core of the claim is untrue.
23. At paragraph 44 the judge referred to being faced with a difficult decision, particularly as the judge had found he had not been credible in relation to all of the core aspects of the claim. The judge evaluated the different key aspects and made clear findings. Notably, the judge accepted he had been detained in 2015 for attending a teacher strike. The judge found he was released without charge or with any reporting restrictions. The judge did not accept the other claimed periods of detention. The judge did accept from the what's app messages that in December 2018 the police had been to his home on two occasions.

24. In this context the judge evaluated the risk for the appellant on return. Reference is made to the multiple family members who have been recognised as refugees on the basis of pro-Kurdish political involvement. Their status is documented in the papers. The judge referred to the country guidance decision and the risk factors. The judge pointed out he was Kurdish; his religion and he was a low-level supporter of the HDP. The judge had also found he had been arrested in December 2015. The judge also accepted more recent interest in his whereabouts.
25. The judge correctly does not speculate why there would be a renewed interest in him after seven years. Without wishing to speculate myself there is a possibility that his departure prompted this renewed interest. In the same way, it would be dangerous to speculate or draw inferences from his ability to leave by the airport. Whatever reason, the judge accepted he was now of interest to the authorities. It was in this context the judge found a real risk.
26. I do not see any material error in the judge's reasoning. The judge had regard to relevant factors and given clear reasons for rejecting parts of the claim. The fact some aspects were rejected does not of itself mean the judge's reasoning was defective. There were other risk factors which the judge highlighted and legitimately took into account.

Notice of Decision

No material error of law has been demonstrated. Consequently, the decision of First tier Tribunal Judge Colvin allowing the appeal shall stand.

Francis J Farrelly
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber