



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004713

First-tier Tribunal Nos: HU/58252/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

3rd January 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

RY
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Daykin, Counsel instructed by Stuart & Co Solicitors

For the Respondent: Mr N Wain, Senior Home Office Presenting Officer

Heard at Field House on 6 December 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant (*and/or any member of his family, expert, witness 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 appellant, likely to lead members of the public to identify the appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Turkey born on 10 October 1999. The appellant initially claimed asylum on 7 October 2014, such application being withdrawn on 16 March 2018 due to non-compliance. The appellant lodged further submissions on 10 March 2020. The respondent refused the appellant's claim on 13 October 2022. The appellant's appeal against that decision was dismissed by Judge of the First-tier Tribunal Kudhail ("the judge") on 9 October 2023, following a hearing on 18 September 2023.
2. Permission to appeal was granted by Judge of the First-tier Tribunal Dainty on 30 October 2023 on the basis that it was arguable that the First-tier Judge had erred in law by failing to consider how consistent the account was with country evidence, which Judge Dainty felt was particularly so given: *that the country evidence had been spelled out in some detail in the skeleton argument; no one from the respondent attended to make submissions contrary to the country evidence or to challenge the appellant's account.*
3. The matter came before me to determine whether the First-tier Tribunal had erred in law, and if so whether any such error was material and thus whether the decision should be set aside.

Submissions – Error of Law

4. In the grounds of appeal and in oral submissions by Ms Daykin it is argued in short summary for the appellant as follows.
5. It was asserted that the judge failed to take relevant matters into account. The grounds noted that the respondent had omitted to interview the appellant and it was unfair for the First-tier Tribunal to have taken the appellant's provision of detail about his ill-treatment he received in detention at a later date in the proceedings, as adverse to his credibility. The appellant relied on the skeleton argument (ASA) before the First-tier Tribunal at paragraph 22 which had criticised the respondent's approach to the evidence, it being argued that the judge took the same erroneous approach.
6. The grounds of appeal noted that the First-tier Tribunal Judge was referred to the CPIN in the ASA including for the proposition that authorities do release people from detention on condition that they will become informants or so that they can be monitored, and Ms Daykin submitted that the appellant's claims were consistent with the objective material which the judge had failed to consider.
7. It was also argued on behalf of the appellant that although the judge had found that there was no evidence of the appellant's father's political profile or what he did to assist the PKK or that he had sympathy for the PKK, again it was argued that the First-tier Tribunal Judge failed to consider the objective evidence which made clear that the Turkish authorities often conflate Kurdish ethnicity with PKK sympathy or support and Ms Daykin relied on 10.2.2 of the CPIN which provided in relation to Kurds that:

"When asked what would bring a suspected PKK member/supporter to the attention of the authorities, the Director of a Turkish organisation in the UK opined:

‘Kurds are assumed to be PKK members/supporters’”.

8. It was argued that the judge’s approach failed to appreciate the specific context of the appellant’s claim. It was emphasised in submissions that it was unfair of the judge to make adverse findings upon the appellant providing further detail in later witness statements. It was not the case that the appellant had not mentioned that he was detained and although the judge had acknowledged the appellant was a minor, there was no real assessment of how that might have impacted his evidence. It was argued that the judge had taken the wrong approach in pointing out what was missing rather than assessing the evidence that was there.
9. Ms Daykin relied on her main point, that the judge had not dealt with the objective position with the judge not seeming to appreciate that being Kurdish is enough to engage the interest of the authorities which the judge did not address, with it being the judge’s findings that there was no evidence of any connection with the PKK.
10. Ms Daykin argued that the judge at [24] appeared to be requiring specific activities to trigger interest in the appellant whereas it has been the appellant’s claim throughout that he was not involved in the PKK but supportive of HDP. They were a much lower level of factors than what the judge appeared to require at [24] and Ms Daykin noted that the appellant could have been released and monitored unbeknownst to him. She argued that it was incorrect to suggest that the judge did not get to the background material as the appellant’s profile did not reach that level whereas the judge ought to have assessed the background evidence in the round.
11. There was no Rule 24 response. In oral submissions for the respondent Mr Wain argued in short summary as follows.
12. The judge had carried out a structured approach. Whilst the appellant was not cross-examined, the judge asked the appellant’s representative, recorded at paragraph [10], to put any contentious issues to the appellant where they were not addressed in the appellant’s witness statement, in view of the respondent’s absence.
13. The judge at [18] had considered the medical evidence and the impact on the appellant’s ability to give evidence and the judge also considered, at [21] that the appellant was a minor when he first arrived in the UK (and therefore when the alleged events took place). At [19] the judge found that the appellant’s own activities could not lead to any interest in him as the judge found that there was little evidence suggesting that the appellant’s own HDP activities were known to the Turkish authorities. The judge went on at [20] to take into account that whilst the appellant detailed his claimed detention and arrest including in his witness statement of 9 January 2023, he only provided the detail of this claimed ill-treatment in his further statement on 7 September 2023 with the judge taking into account that although his mother had provided a letter she did not refer to the appellant’s arrest or detention and there was no external evidence from the hospital confirming this although the appellant had stated that his mother took him to the hospital. The appellant’s mother also made no mention of his injuries which the judge considered to be damaging.
14. Mr Wain argued that the judge was making a **TK (Burundi)** point that, whilst not requiring corroboration, the judge was entitled to take into consideration that

no information had been provided from the hospital where such ought to have been available.

15. At [21] the judge had noted the lack of a detailed account when first given and specifically at [21] the judge had taken into account that the appellant was a minor when he first arrived in the UK. However the judge also took into account that by the time the appellant made his first statement on 5 February 2018 he was 18 years old, and the judge took into consideration that the appellant was legally represented.
16. The judge, in Mr Wain's submission, properly took into account, that whilst photographs were produced, little weight was attached, considering them in line with **Tanveer Ahmed** as set out at [22] of the decision. The judge went on to set out at [24] the lack of evidence before the First-tier Tribunal that the appellant's father had a political profile or that he was sympathetic to the PKK and that the appellant had not set out what his father's activities for the PKK were that triggered such interest given that it was the appellant's account that he was detained because his father was suspected of PKK activities and the respondent had challenged this as lacking in detail. The judge also noted that the appellant in his first 5 February 2018 statement had claimed that the family were accused of providing the PKK with food, but the appellant had not set out in the subsequent statement what the activities were for the PKK which triggered such interest and the appellant's mother made no mention at all of this in her statement.
17. Mr Wain noted that paragraph 10.2.2 of the CPIN, now relied on by the appellant's representative was not referred to in the appeal skeleton argument with the argument in the ASA at paragraphs 8 to 12 framed differently. Paragraphs 8 to 12 of the appellant's skeleton argument considered risk factors including as set out in **IA HC KD RO HG (Risk - Guidelines-Separatists) Turkey CG [2003] UKIAT.**
18. It was not disputed by the respondent that there is general discrimination experienced by Kurds in Turkey but having rejected the appellant's claimed profile and that of his family the judge was entitled to accept that this would not reach the level of persecution for the appellant.
19. Mr Wain submitted that in relation to the claim that individuals were sometimes released from detention to be monitored, the appellant had not provided this reason in his witness statement and the judge was entitled to reach the conclusions they did.

Conclusions - Error of Law

20. I have reminded myself of the relevant authorities, including that 'it is well established [...] that judicial restraint should be exercised when the reasons that a Tribunal gives for its decision are being examined. The Appellate Court should not assume too readily that the Tribunal misdirected itself just because not every step in its reasoning is fully set out in it' (**UT (Sri Lanka) v The Secretary of State for the Home Department [2019] EWCA Civ 1095.** [§26 -27] citing Lord Hope in **R (Jones) v First Tier Tribunal and Criminal Injuries Compensation Authority [2013] UKSC 19** [(at §25)]).
21. Under section 11(2) of the Tribunals, Courts and Enforcement Act 2007, an appeal lies to the Upper Tribunal against a decision of the First-tier Tribunal "on

any point of law arising from a decision made by the First-tier Tribunal”, rather than on a disagreement of fact. However, an error of fact is capable of amounting to an error of law.

22. In **R (Iran) v Secretary of State for the Home Department [2005] EWCA Civ 982** Brooke LJ summarised the ways in which findings of fact are capable of amounting to an error of law: “...
i) Making perverse or irrational findings on a matter or matters that were material to the outcome("material matters");
ii) Failing to give reasons or any adequate reasons for findings on material matters;
iii) Failing to take into account and/or resolve conflicts of fact or opinion on material matters;
iv) Giving weight to immaterial matters;
v) Making a material misdirection of law on any material matter;
vi) Committing or permitting a procedural or other irregularity capable of making a material difference to the outcome or the fairness of the proceedings;
vii) Making a mistake as to a material fact which could be established by objective and uncontentious evidence, where the appellant and/or his advisers were not responsible for the mistake, and where unfairness resulted from the fact that a mistake was made.”
23. The relevant authorities set out the distinction between errors of fact and errors of law and emphasise the importance of an appellate tribunal exercising judicial restraint when reviewing findings of fact reached by first instance judges. This was summarised by Lewison LJ in **Volpi & Anor v Volpi [2022] EWCA Civ 464** at [2] as follows:
24. “i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.
ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.
iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.
iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.
v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.
vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract.”

25. In the earlier case of **Fage UK Ltd. v Chobani UK Ltd. [2014] EWCA Civ 5** at [114]: the Court of Appeal similarly advised appropriate restraint in the approach to first instance decisions:
- i. The expertise of a trial judge is in determining what facts are relevant to the legal issues to be decided, and what those facts are if they are disputed.
 - ii. The trial is not a dress rehearsal. It is the first and last night of the show.
 - iii. Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court, and will seldom lead to a different outcome in an individual case.
 - iv. In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping.
 - v. The atmosphere of the courtroom cannot, in any event, be recreated by reference to documents (including transcripts of evidence).
 - vi. Thus even if it were possible to duplicate the role of the trial judge, it cannot in practice be done."
26. Although Ms Daykin criticised the judge for not specifically detailing the approach of the Turkish authorities to Kurds, it is clear from the judge's approach, considered holistically and fairly, that the judge had in mind all of the evidence including the background country information. The judge had at [3] set out and summarised the respondent's position which included that it was accepted that Turkish Kurds face discrimination but that this did not amount to persecution.
27. The judge found the appellant's account not credible, and it cannot be properly said that the judge did not consider this account and reach the findings they did, in the context of the background country information. There is also some merit in the argument made by Mr Wain that paragraph 10.2.2 of the CPIN relied on in the grounds of appeal (which stated that Kurds are assumed to be PKK members/supporters and that shepherds and ordinary Kurdish people from Kurdish villages are in jail for allegedly supporting the PKK or have given shelter and food to PKK and that they arrest a few prominent people from a village as an intimidation tactic) was not specifically relied on by the appellant before the First-tier Tribunal.
28. The joint presidential panel in **TC (PS compliance - "issues-based" reasoning) Zimbabwe [2023] UKUT 614** stressed that the procedural architecture in the First-tier Tribunal, including the Practice Statement under the reformed process, is specifically designed to enable the principal important controversial issues to be identified and for the parties' preparation as well as the hearing to focus on them. In **Lata (FtT: principal controversial issues) India [2023] UKUT 163 (IAC)** it was confirmed that the a party that fails to identify an issue before the First-tier Tribunal is unlikely to have a good ground of appeal before the Upper Tribunal.
29. It was the appellant's case in his representative's ASA before the First-tier Tribunal that he comes from a family of supporters of pro-Kurdish political groups and that his father was arrested for suspected involvement with the PKK. The ASA relied on the country guidance case in **IA** and specifically the inexhaustive factors which that Tribunal considered to be material in giving rise to potential suspicion in the minds of authorities, including the level if any of an appellant's known or suspected involvement with a separatist organisation, which must be assessed with the basis on which it is contended that the authorities 'knew of or

might suspect such involvement'. The ASA continued, in referencing the respondent's 2020 CPIN which commenced the assessment of risk for members or sympathisers of the PKK with the factors set out in IA.

30. The judge cannot be properly criticised for failing to specifically reference one extract from the CPIN. The judge followed the approach recommended to them in the ASA in relation to assessing the risk to the appellant. There was no error in applying the same principles to the appellant's claim that his father was suspected of PKK activities. In assessing whether an individual might be of interest to the authorities, as the appellant's ASA reminds, this had to include consideration of the level of known or suspected involvement with a separatist organisation along with the basis on which it is claimed that the authorities might know of or suspect involvement.
31. Whilst it is correct that the background information including at 10.2.2 reminds that Kurds are assumed to be PKK members or supporters, that evidence cannot be considered in isolation. The judge took into account that the appellant's account that he was detained because of his father's suspected PKK activities was challenged by the respondent as lacking in detail and the judge was entitled to take into account that although the appellant in his first, 5 February 20218 statement claimed that the family were accused of providing the PKK with food the appellant did not set out in subsequent statements what might have triggered interest in the appellant's father. The judge also took into account that the appellant's mother's statement also made no mention of this. The judge quite properly in this context, and in the context of considering the factors which might lead an individual to be of interest to the authorities, had to take into account (at [24]) that there was no evidence before him that the appellant's father had a political profile at all (or that he had assisted the PKK or had sympathised).
32. There was no material error in that approach.
33. Criticism was also made of the judge's findings due to the fact that the appellant was not interviewed by the respondent, and it was argued therefore that the judge ought not to have drawn adverse inference from the further detail provided by the appellant later in witness statements.
34. The ground is misconceived. The judge gave adequate reasons for not attaching weight to the further detail provided by the appellant in later witness statements. It cannot be properly said that the judge simply adopted the approach of the respondent.
35. The judge took into account that it was the appellant's own evidence that it was not his own claimed activities which led to his arrest and detention and the judge made findings at [19] which have not been specifically challenged, that the appellant's own HDP activities supporting HDP and distributing leaflets, had not led to any adverse interest in him.
36. The judge was entitled to take into account at [21] that although the judge factored into their consideration that the appellant was a minor when he first arrived in the UK, at the time of the fresh claim and the appellant's statement on 5 February 2018 the appellant was 18 years old and was legally represented and therefore should have been aware of the need to detail their account in particular, of key events. There was no error in that approach, nor is it infected by any lack of consideration of the appellant not being interviewed by the

respondent which the judge would have been aware of, including having taken into account the ASA, which noted the lack of interview.

37. It is also not the case that the judge rejected the appellant's account because of a lack of detail in his earlier accounts, per se. The judge was entitled to find the lack of detail, particularly in the appellant's earlier accounts, damaging to his claim, considered together with the lack of evidence, for example from the hospital, where such ought to have been reasonably available. The judge also noted that the appellant's mother's letter made no reference to the appellant's arrest or detention. The judge further took into consideration in the round at [22] the photograph provided, although attached little weight to this evidence including that it was 'simply a visual of scars the appellant has' and not a scarring report. There was no specific challenge to this finding.
38. Ms Daykin pointed to her ASA before the First-tier Tribunal (paragraph 19), where reliance was placed on the CPIN, that the authorities do release people from detention on condition that they will become informants or so that they can be monitored. However, the judge properly took into account, at [23], that it was the appellant's own evidence (in his 2018 witness statement) that he was released after five days as there was no evidence against him and therefore by the appellant's own account he was of no interest to the authorities, which is why he was released. The First-tier Tribunal did not accept that if the appellant had been threatened with being killed as he claimed, that he would have been released after five days particularly if he was suspected of having PKK links or his father was suspected of those links. Whilst the CPIN extract relied on by the appellant in the ASA makes reference to the fact that people may be released on condition of becoming an information, that was not the appellant's evidence in his witness statement. Whilst this CPIN extract also refers to the possibility that authorities may continue to monitor those released from detention, there was no suggestion or evidence that the appellant claimed this was in fact the case for him.
39. In seeking now to forensically analyse sections of the CPIN to find claimed errors in the judge's approach, the appellant is in effect, asking the Upper Tribunal to 'island-hop' whereas the First-tier Tribunal clearly had regard to the whole sea of evidence. There was no material error in the judge not specifically setting out all of the background country information. The judge clearly made their findings in the context of the background country information.
40. The judge was entitled to take into account the lack of detail in the appellant's account and that his account had not been internally consistent including that although the first statement stated that the family were accused of providing PKK food, this was not set out in the subsequent statement where it did not set out what the alleged activities were, rather that the appellant had told the authorities his father was not connected with the PKK.
41. Whilst a Turkish Kurd such as the appellant's father might have been of interest to the authorities even without any PKK sympathy, the judge was entitled to take into account that this was not one of those cases including given the deficiencies in the appellant's account and the lack of evidence that his father had a political profile, and the lack of any evidence of him assisting the PKK or any PKK sympathy.
42. The judge was entitled to take into consideration that although the appellant claimed that due to his father's disappearance the Turkish authorities are still

harassing his mother, this seemed to be somewhat at odds with the authorities releasing the appellant due to insufficient evidence. The judge was entitled to not accept, for the adequate reasons given, that the authorities would return after eight years still seeking the appellant despite the fact that the authorities released the appellant knowing he did not have links to the PKK.

43. The judge also took into account in the round, at [26], that although the appellant stated he had two elder brothers still living in Turkey they had not been targeted despite the accusation that the family had assisted the PKK by giving them food. It was open to the judge, not to accept the appellant's reasoning that this was purely because he had been living with his mother at the time and his brothers were not, given that there was the same familial relationship with their father.
44. The judge also took into consideration the letter from the appellant's mother [27] and attached little weight to it including that there was no evidence as to how this was obtained other than the appellant indicating that his uncle had travelled back to Turkey. There was no identity card and very little detail in the letter about what happened to the appellant. There is no challenge to the judge's findings that little weight was attached to this letter.
45. The judge's conclusion at [28] including in referencing the appellant's lack of any profile which would expose them to risk, further disclosed that his decision had been made within the context of the background information and the country guidance. The judge found that there was little evidence to show that the appellant or his family "are well known to the Turkish Police or that they have a profile which would expose them to risk". The judge was entitled to make that finding.
46. The grounds of appeal are no more than a disagreement with the First-tier Tribunal's comprehensively reasoned findings.

Notice of Decision

- (1) The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
- (2) I do not set aside the decision.

M M Hutchinson

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

20 December

2023