



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No.: UI-2023-004937

First-tier Tribunal Nos: PA/50768/2023
LP/01391/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

11th January 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

DS (TURKEY)
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Sophie Panagiotopoulou, Counsel

For the Respondent: Mr Steve Walker, Senior Home Office Presenting Officer

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.

Heard at Field House on 21 December 2023

DECISION AND REASONS

1. The appellant appeals against the decision of First-tier Tribunal Judge Mulholland promulgated on 26 October 2023 (“the Decision”). By the Decision, Judge Mulholland dismissed the appellant’s appeal against the respondent’s refusal of his protection claim.

Relevant Background

2. The appellant’s protection claim arose from his claimed support of, and activities for, the HDP Party in Turkey and from his claimed suspected involvement with the PKK, which he said had resulted in two detentions between 20 November 2017 and 25 October 2018.

The Reasons for the Grant of Permission to Appeal

3. On 20 November 2023 Judge Dainty granted the appellant permission to appeal from the decision, for the following reasons:
 2. The grounds assert that the Judge made an error as regards the Appellant’s involvement in the HDP and ignores the explanation given by the Appellant in evidence (see 36-35 and 59 of the decision). It is also said that the Judge failed to apply country background evidence insofar as that evidence does support the targeting of low-level supporters in some instances. It is further averred that the assessment of risk on return is flawed in relation to family connections/activities as a risk factor (applying IK CG [2004] UKIAT 00312) (para 10) since the Judge seems to have erroneously missed (f) out of the list she sets out of the relevant country guidance risk factors at [10].
 3. The erroneous setting out of the risk factors at [10] of the decision is alone a sufficient and arguable error in that it is arguable that this led the Judge into error as to who would be of interest to the Turkish authorities and it is material because the Appellant in this case was relying on the connections of his family members. There are also arguable errors of fact on the assumption that the transcript shows what the grounds of appeal allege in that the Judge fails to deal with the Appellant’s correction in oral evidence that he was only a supporter, not a member of HDP.

The Hearing in the Upper Tribunal

4. At the hearing before me to determine whether an error of law was made out, Ms Panagiotopoulou (who appeared below) developed the grounds of appeal which she had settled.
5. After she completed her submissions, Mr Walker conceded that the Judge had made material errors in her decision, and that the Decision was unsafe and should be set aside.
6. While the position taken by Mr Walker was not determinative of the question whether an error of law was made out, I was satisfied that his

concession was appropriate, and my reasons for finding that there are material errors of law in the Decision are set out below.

Reasons for Finding an Error of Law

- 7.** Ground 1 is that the Judge made a material factual error when considering, at paras [29-35], the appellant's claim to have been involved with the HDP Party in Turkey. The Judge held at para [35], that the appellant's credibility was seriously undermined by the internal and external discrepancies in his evidence on this topic.
- 8.** In her discussion of this aspect of the appellant's claim, the Judge found that the appellant had provided a HDP membership card and letter as part of his claim. However, as the Judge also found, possession of such a membership card was externally inconsistent with the background evidence which was that the HDP did not offer membership cards to members.
- 9.** The case advanced by Ms Panagiotopoulou is that the appellant clarified in oral evidence that he was only a supporter of the HDP Party, and that in interview he was referring to his membership card for the Kurdish People's Democratic Assembly ("KDPA"), not a membership card for the HDP. Although in cross-examination the appellant had said that as far as he could remember he did obtain a membership card, he clarified that the membership card was for the KDPA in London, and he confirmed that he was referring to the copy of his membership card in the appellant's bundle.
- 10.** Although I have not been provided with a transcript to show that the distinction was made clear in the appellant's oral evidence, the Judge clearly misdirected herself at para [32] in stating that the appellant had provided a HDP membership card as part of his claim. As she herself goes on to state at para [33], the card she is referring to is in fact an ID card issued by the KDPA on 6 June 2021, after the appellant had arrived in the UK. Accordingly, on its face, the membership card did not purport to be a membership card for the HDP.
- 11.** The Judge compounds her error at para [59], where she finds that the membership card for the HDP is not genuine, as the country information states that a general member (such as the appellant) would not be given a card.
- 12.** The Judge was clearly wrong to conflate a membership card for the KDPA with a membership card for the HDP, and I consider that this mistake has contaminated her assessment of the appellant's general credibility on the issues in dispute, particularly as it was agreed at the outset that the appellant was credible in his claim to have been a supporter of the HDP: see para [7] of the Decision.
- 13.** Ground 2 is that in finding that the appellant's claim to have been released without charge after the authorities had found HDP receipts and a poster

of Abdullah Ocalan during a house raid to be inconsistent with the country background evidence and implausible, the Judge had failed to have regard to the totality of the background evidence, including the Country Guidance case of *IK* which confirms that the authorities target low-level supporters of the HDP, arresting them for interrogation and ill-treatment, and then releasing them.

- 14.** Ground 2 is primarily based upon the respondent's fact-finding mission report to which the Judge makes reference at para [11] of the Decision. However, when addressing the plausibility of the appellant's account of being detained on two occasions but on each occasion being released without charge, the Judge did not direct herself by reference to the fact-finding mission report. Instead, at [44], she referred to external sources as stating that people who are perceived to be pro-PKK face long periods of time in prison, with activists now facing up to years in prison instead of months; and - at para [45] - to a further report stating that a person can face up to 6 months in prison for sending a political tweet.
- 15.** While it cannot be said that the Judge was wrong to refer to background evidence which in her view undermined the plausibility, and hence the credibility, of the appellant's account of his two detentions, I consider that the Judge materially erred in not engaging with a substantial body of background evidence relied on by the appellant at the hearing which supported the plausibility, and hence credibility, of the appellant being detained and then released without charge, in circumstances where his offending was objectively of a low level nature.
- 16.** Ground 3 relates to para [56] of the Decision, where the Judge found that she had no information before her to suggest that the authorities in Turkey would target the appellant because of his family members' activities; and she also found that the Country Information did not support the appellant's claim that his relatives would be targeted.
- 17.** The Judge clearly misdirected herself in this regard, as one of the risk factors identified by the Tribunal in *IK* is "*(f) - whether the appellant has family connections with a separatist organisation such as Kadek or Hadep or Dehap*".
- 18.** As is highlighted in the grant of permission, the Judge omitted subparagraph (f) in the list of risk factors which she gave at para [10] of the Decision. Possibly as a consequence of this omission, the Judge erroneously held that there was nothing in the country background evidence to suggest that the Turkish authorities would target the appellant because of his family's activities.

Summary

- 19.** In conclusion, the Judge materially erred in her assessment of both past persecution and future risk. The consequence is that the Decision is unsafe, and it must be set aside in its entirety.

Disposal

20. This is not an appropriate case for retention by the Upper Tribunal. In view of the extent of the fact-finding that will be required to remake the decision, the appropriate course is for the appeal to be remitted to Taylor House for a fresh hearing, with none of the findings of fact made by Judge Mulholland being preserved.

Notice of Decision

The decision of the First-tier Tribunal is vitiated by material errors of law such that the decision must be set aside in its entirety, with none of the First-tier Tribunal Judge's findings of fact being preserved.

Directions

This appeal shall be remitted to Taylor House for a fresh hearing before any Judge apart from Judge Mulholland.

Anonymity

The First-tier Tribunal made an anonymity direction in favour of the appellant, and I consider that it is appropriate that the appellant retains anonymity for these proceedings in the Upper Tribunal.

Andrew Monson
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
4 January 2024