Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/03622/2013

THE IMMIGRATION ACTS

Heard at Field House
On 15 October 2013

Determination Sent

Before

THE PRESIDENT, THE HONOURABLE MR. JUSTICE MCCLOSKEY
UPPER TRIBUNAL JUDGE WARR
(Anonymity Direction Made)

Between

CA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Panagiotopoulou, Counsel instructed by Trott & Gentry LLP
For the Respondent: Ms E Martin, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the appeal of the appellant who was born in Turkey on 12 February 1977. He arrived on what it is claimed was a false visa in January 2009. On 2 July 2009 he applied for leave to remain as a businessman under the Ankara Agreement. This

© CROWN COPYRIGHT 2013

application was refused on 16 July 2009. He was detained on 8 March 2013 and he then claimed asylum. This application was refused and the appellant appealed the decision and this appeal came before the First-tier Tribunal on 15 May 2013.

2. The appellant's account was that he is a Turkish Kurd whose family had suffered at the hands of the authorities in Turkey. He and his family had assisted the PKK. He had been asked to provide boots and medicines for the PKK. While transporting these goods he was detained by the police who ill-treated him and instructed him to poison the food which he supplied to the PKK to send them to sleep. The appellant said he had told the PKK about this plan and as a result he went to the police and applied for a passport to leave the country. He was concerned that if the PKK found out that he had made an agreement with the police his life would be in danger and he obtained a visa and travelled to the UK without difficulty from Ankara.

3. One of the issues before the First-tier Tribunal was the question of delay. In paragraph 36 of the First-tier Tribunal's decision reference is made to the appellant's witness statement where he said that he had not applied for asylum until 2013 because he was afraid that once he had applied for asylum he would be sent back to Turkey. Previously he had been in the UK in 1996 and in 1997 he had been removed back to Turkey. He then refers to the problems that he had experienced in Turkey on return and says that when he came to the UK for the second time he was afraid that if he applied for asylum he would be sent back and would experience on return to Turkey the same problems as previously.

4. The First-tier Tribunal considered the issue of delay in paragraphs 64 to 65 of the determination finding that there was no record of any earlier asylum claim and appeal by the appellant. The Secretary of State had no record of any application or appeal and nor did the Tribunal. The appellant had placed no evidence of any such application or appeal before the First-tier Judge.5. In paragraph 65 the First-tier Tribunal said as follows:

> "I find that it is not credible that the appellant could have made an asylum claim and the Secretary of State not have any record of it. Similarly it is not credible that the appellant could have had an asylum appeal determined and the Tribunal not have a record of it."

5. It was also the appellant's case that he had been detained and placed in a cell overnight at Edmonton Police Station and he had attended voluntarily. The Judge did not accept that any police station in the UK would take someone into custody and not have a record. Each police station had a custody sergeant charged with recording the history of every detainee in accordance with the Police and Criminal Evidence Act 1984. The account of his detention in Edmonton Police Station was considered by the Judge to be another example of the appellant's failure to tell the truth and the lack of any evidence of any earlier asylum claim and appeal by the appellant undermined the credibility of his claim to have made such an application and to have appealed its refusal. The Judge found that the appellant had invented

the claimed earlier asylum application and appeal to explain why he did not apply for asylum earlier than his apprehension on 8 March 2013. The Judge found that this invention fundamentally undermined the credibility of the appellant's claim as did his failure to claim asylum before his apprehension some four years after his arrival in the UK. The Judge then sets out further reasons for finding that the appellant's claim lacked credibility including the question of inconsistencies in the appellant's account.

6. The Judge then turned to consider a document which had been put in, in support of the appellant's account which was a record from a convicting court in Turkey of an offence of aiding and abetting the PKK. The approach of the Judge to this document is the subject of criticism. In paragraph 81 the Judge refers to the document naming the appellant and it being an apprehension order. In the following sub-paragraph the Judge refers to the well-known case of **Tanveer Ahmed [2002] UKIAT 00439** and reminds himself that it was for the appellant to show that the document could be relied upon, that he must consider whether the document is one on which reliance should properly be placed after looking at all the evidence in the round and that documents may be unreliable even if it cannot be established to the requisite standard of proof that they are forgeries. He adds that it was of course proper to consider whether unreliable documents may have been used to support a genuine claim.

7. In paragraph 82 the Judge states as follows:

> "I have found the appellant's basic account to be lacking credibility. It follows that that basic account cannot lend veracity to the document. I do not find this document to be reliable. There is no evidence to show its provenance. The document is some sort of copy. Clearly such a document is open to material change being effected even if it started as a genuine document. During the copying process any and all material entries may have been changed. Such changes would not be detectable. It was the appellant's evidence that he was never arrested or charged. There is no explanation as to how such a document would come into being. The appellant's activities at their highest were such that the police had no real interest in him and gave him a passport to leave. He had not been charged. He had not been detained as he went through customs and passport control to board his aeroplane. He was of no interest to anyone. It is not credible even if which is not accepted they are true, that such minor activities would arouse the interest of anyone after he has departed when no legal proceedings had been put in motion such as his arrest, interview or charge."

The Judge found there was no reliable evidence to support the claimed authenticity of the document and that the appellant was without credibility.

8. The Judge then notes that the appellant had earned his living from his apricot orchard which had been tended by his mother in his absence and that she had moved

to the local town which was nearby as she continued to look after the orchard. The Judge then refers to the appellant's family who had a history of involvement with the PKK which had resulted in the ill-treatment of members of the family who had fled to the UK and made claims which appear to have been successful. The Judge refers to the determination in relation to a member of the appellant's family and further notes that the appellant had not claimed any involvement in the activities of his siblings which had drawn them to the attention of the Turkish authorities and no mention had been made of the appellant in his sibling's appeal. There was no reason in the view of the First-tier Judge whey he should not return to tend his orchard with his mother, he was of no interest to anyone when he left Turkey to come to the UK and there was no reason why he should be of any interest on his return. The Judge refers to the issue of internal relocation and the case of **Januzi v Secretary of State for the Home Department [2006] UKHL 5**. In relation to Article 8 although it is not the subject of the appeal the Judge does refer at paragraph 102 to the appellant's siblings, not one of whom came to support the appellant at his hearing and there was not a statement from any one of them. There was no evidence of any family life.

9. There was an application for permission to appeal settled by Counsel who appeared before us. The application was refused by the First-tier Tribunal but renewed and Upper Tribunal Judge Allen on 7 August 2013 granted permission on paragraphs 5 and 7 of these further grounds which read as follows:

> "5. In refusing permission to appeal the FTT Judge stated that "the fact that the Home Office had a record of an earlier application for asylum does not affect the overall reasoning and findings": it is respectfully submitted that such a finding is clearly unsustainable as the IJ expressly states that "such invention (of a previous asylum claim) fundamentally affects the credibility of te appellant's claim". It cannot be said that the issue of the previous asylum application does not affect the overall findings of the IJ.
>
> …
>
> 7. In rejecting the reliability of a document produced in support of the applicant's case, the IJ states: "I have found the appellant's basic account to be lacking in credibility. It follows that the basic account cannot lend veracity to the document. I do not find this document to be reliable." [para 82 determination]. It is submitted that such finding discloses a fundamentally erroneous approach to the evidence. Credibility must be assessed in the round; in the instant case as illustrated by the above finding in para 82 the IJ reached his findings on the credibility of the applicant's account in isolation of the documentary evidence in support; this is respectfully a flawed approach which materially impacts on the assessment of credibility as a whole."

10. Paragraph 5 refers to the issue of whether there had been an earlier application for asylum in 1996/1997. The previous asylum claim, had it been shown to have been made, would have been a material matter as the Judge had said that the invention of

the previous claim fundamentally affected the credibility assessment. Paragraph 5 does need to be read with paragraph 4 where it is asserted that the Secretary of State had accepted that there was a previous asylum claim and was unable to locate a copy of the determination. That assertion is not accepted by Ms Martin and it is fair to say that there is nothing in the Record of Proceedings before the First-tier Judge to indicate that any concession at all was made. The Record of Proceedings before the First-tier Judge is entirely consistent with the determination. It is also argued in paragraph 4 of the grounds upon which permission to appeal was not specifically given that there would be no perceived benefit to an applicant disclosing that he had previously made an asylum claim in the UK which had been refused and that he had been removed after exhausting his appeal rights. The Judge does however find indeed that there was such a reason and that was to explain the delay in his stay in the United Kingdom after the refusal of his application from July 2009. The Judge found that he had invented the earlier claim in order to explain that delay. We conclude that there was no error of law in the Judge's consideration and determination of this issue.

11. A similar point was made in ground 6 of the grounds, again on which permission to appeal was not specifically given. Reference is made to the appellant's claim to have been detained at Edmonton Police Station. The Judge did not accept this and it is said in argument before us that the Judge had in the papers before him the letter from the Enforcement and Removals Section of the Home Office dated 7 March 2013 requesting the appellant to attend an interview on 8 March. It is said that that assists the appellant in his claim that he attended voluntarily and that the Judge's assessment of the facts was perverse. We have to say we do not accept that the Judge was perverse in relation to this assessment of the facts. He was entitled to take into account that there would be a record of such matters. The appellant had said apparently that his fingerprints and DNA samples had been taken and again there was no record of his detention at all. The letter of 7 March is somewhat inconsistent with the claim to have been detained since it refers to the inability to attend the interview due to illness. It may be that it is a generic letter but we are not satisfied that the Judge's decision could remotely be described as perverse given the terms of this letter. Permission to appeal was not granted specifically in relation to this point although we have gone into it *de bene esse*. In the grounds it was said that it was the adequacy of the enquiries that were challenged. There has been ample time to make further enquiries. Nothing has happened and we can understand why Upper Tribunal Judge Allen did not grant permission on this particular aspect.

12. Permission to appeal was granted as we have noted in respect of paragraph 7 of the renewed grounds of appeal. This criticises the Judge's assessment of the documentary evidence with reference to what he said in paragraph 82 of his determination which we have set out above in particular the words "I have found the appellant's basic account to be lacking credibility. It follows that that basic account cannot lend veracity to the document. I do not find this document to be reliable." In our view the Judge clearly had in mind the well-known guidance set out in **Tanveer** Ahmed – which, as we have noted, he reminded himself of in the preceding

paragraph. It is said the Judge should have looked at the evidence in the round. It is quite clear that when the Judge's observations are set in their context and the paragraph is read with what precedes it that he did exactly that. There is no flaw in the Judge's approach to the assessment of the documentary evidence. We find that there was no error of law in the Judge's consideration and determination of this issue.

13. In paragraph 9 of the renewed grounds reference is made to what is said to be the failure of the Judge to take into account the risk on return and in particular in failing to refer to the country guidance case of **IK** [2004] UKIAT 00312. We remind ourselves that paragraph 9 does not fall within the grounds on which permission to appeal was granted. Counsel refers in particular to paragraph 90 of the determination which she submitted was the sum of the extent of the Judge's assessment of the risks on return. In that paragraph the Judge finds that the appellant was of no interest to anyone when he left to come to the UK and there was no reason why he should be of any interest upon his return. As Ms Martin submits that does not do justice to the Judge's assessment. In the preceding paragraphs the Judge refers to the appellant's mother and the tending of the orchard. He refers to the appellant's family and their involvement with the PKK and he also notes that the events complained of arose through matters arising some years previously and some of the family were granted their asylum status on the basis of events that had occurred many years in the past. It was also the position that the appellant had not claimed involvement in the activities of those family members and as we have mentioned they were not called as witnesses in support of the appellant's case. The Judge found in the circumstances there was no reason why the appellant should not return to tend his orchard with his mother. We find no flaw in the Judge's consideration and determination of this issue.

14. There is criticism of the reference by the Judge to the case of **Januzi**. We find this criticism is misplaced. The country guidance refers to the question of relocation, in fact Counsel's skeleton argument which was before the Judge also referred to the issue of relocation. What this point boils down to is that there was no express reference by the Judge to the case of **IK**. The Judge does however refer in paragraph 17 of his decision to the material before him. This included more up to date material than the material before the Tribunal in **IK**. It also included the appellant's objective bundle which included the case of **IK** as well as the skeleton argument to which I have made reference. It appears to us that the Judge had regard to the material before him. He refers to the court proceedings. He refers to the need to assess the evidence in the round in paragraph 53 of the decision. He reminds himself that he had looked at all the evidence in the round before making any findings including credibility findings. We find no flaw in the Judge's consideration and determination of this issue.

15. On the grounds on which permission was granted we find that no error of law has been identified and we have looked further at the other grounds but we do not find that those grounds raise any arguable challenge to the determination which is no

doubt why permission to appeal was not granted on them. It does appear to us that on analysis the grounds do no more than express disagreement with the Judge's findings of fact which were open to him. Accordingly we find that the decision of the Judge was not flawed as claimed. There is no material error of law and the decision of the Judge must stand.

Signed Date 23 October 2013

Upper Tribunal Judge Warr

ANONYMITY ORDER
The anonymity order made by the First-tier Judge continues.