Upper Tribunal

(Immigration and Asylum Chamber) Appeal Number: PA/11294/2016

THE IMMIGRATION ACT

Heard at Field House	**Decision & Reasons Promulgated**
On 12th June 2017	**On 27th June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

AM

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Thirumaney of Shervins solicitors

For the Respondent: Ms Ahmed, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Turkey. Having considered all the circumstances, as an anonymity direction was made previously, I make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge G Clarke promulgated on 23rd January 2017 whereby the judge dismissed the Appellant's appeal against the decision of the Respondent to refuse him asylum humanitarian protection or relief on the grounds of Articles 2 and 3 of the ECHR.

3. By a decision of 4th April 2017 Upper Tribunal Judge Kebede granted permission to appeal to the Upper Tribunal. The permission is granted in the following terms: –

The Grounds assert that the judge failed to undertake a proper risk assessment on the basis of the accepted findings made by the Home Office in the appellant's brother's case. Whilst the judge arguably did take account of the findings made by the respondent in the appellant's brother's case, a further matter now arises in that the respondent's adverse findings in the appellant's brother's case have since been overturned by the Tribunal which then allowed his appeal. Although the decision allowing the appeal post-dated the appellant's appeal and was therefore not a matter before Judge Clarke or a matter that he could possibly have taken into account, and therefore no criticism could be made of his findings at the time in that respect, the fact that he relied upon adverse findings made by the respondent which have since been undermined give rise to an issue of fairness and thus merits further consideration. Accordingly I am prepared to grant permission.

4. Thus the case appeared before me to decide whether there was an error of law in the original decision.

Basic outline of the facts

5. The appellant is a Muslim Kurd from Gaziantep in Turkey, where he lived with his parents, his younger sister and older brother.

6. The appellant has made a number of claims which were rejected by the judge The appellant claimed to be a supporter of the BDP and allegedly assisted his father, who was also a supporter of the BDP, to take food to terrorists in the mountains. The appellant claimed that he was arrested on 21 March 2013 at Newroz celebrations. The appellant was arrested again on 1 May 2013 for taking part in workers celebrations in Gaziantep. During the course of his arrest and detention the appellant claimed to have been mistreated.

7. On 18 May 2013 the appellant left Turkey. It appears that the appellant had sought to claim asylum in Austria on 16 May 2013. Thereafter the appellant claims to have arrived in the United Kingdom on 25 May 2013 and claimed asylum here on 19 June 2013.

8. The appellant's brother had left Turkey on 8 October 2013. He had made similar claims to the appellant but also claimed that he had been arrested and detained between May and August 2013. The family home had been raided in August 2013 whilst the authorities were seeking the brother.

9. In considering the appellant's circumstances the judge had rejected all of the claims by the appellant to have been arrested and detained. The judge in a very careful examination of the appellant's account is given valid reasons for finding that the account was not credible and for rejecting the account.

10. The judge in dealing with the matter considered the brother's evidence both at paragraphs 63 and 64 and at paragraph 99 of the decision. In assessing the brothers evidence the judge has noted not only that it was accepted that the brother was a low-level supporter of the BDP but also that at that stage the respondent did not accept that the appellant's brother was otherwise of adverse interest to the authorities.

11. The judge goes on thereafter to note that the appellant on his own account after having been detained and mistreated merely returned to school to finish his school term. The judge was satisfied that such were not the actions of a person that was in fear of his life. The judge found that the appellant would not be of any interest to the authorities and would not be under surveillance by or of any interest to the authorities.

12. The essence of the challenge laid by the appellant is that the findings having been made in the brother's own appeal that the brother has been involved with the BDP; has been arrested; has been mistreated; and is therefore of interest to the authorities, impacts upon the approach to be taken with regard to the appellant.

13. The judge has given valid reasons for coming to the conclusions that he did with regard to the personal circumstances of the appellant. He has given valid reasons for finding that the appellant's account of having been involved with the BDP were not credible. He is also given valid reasons for coming to the conclusion that the appellant account otherwise of having been arrested and detained were not credible also. In themselves none of those actions arise from or relate to the appellant's brother and/or the appellant's brother's involvement in politics.

14. Having considered the circumstances the judge has fully justified the conclusions of fact with regard to the appellant some circumstances. There is nothing on the facts as presented all the issues raised which undermines those conclusions.

15. The issue arises as to whether or not by reason of the brother's involvement the authorities would result in the authorities having an interest in the appellant. In part the appellant's representative is seeking to rely upon the current country guidance cases.

16. The current country guidance with regard to Turkey is set out in the cases of IA Turkey CG (2003) UKIAT 00034 and IK (Returnees – records –IFA) Turkey CG 2004 UKIAT 00312. From those cases the following material parts of the judgement: –

IA 2003 UKIAT 00034 paragraph 46 :-

….

The following are the factors which inexhaustively we consider to be material in giving rise to potential suspicion in the minds of the authorities concerning a particular claimant.

…

f) Whether the appellant has family connections with a separatist organisation such as KADEK or HADEP or DEHAP…..

IK (Returnees –Records-IFA) Turkey CG 2004 UKIAT 00312

Conclusions in IK at paragraph 133

8. The escalation of the violence following the ending of the PKK ceasefire reinforces our view that the risk to a Kurdish returnee of ill treatment by the authorities may be greater if his home area is in an area of conflict in Turkey than it would be elsewhere, for the reasons described in paragraphs 90 and 116.

9. The Turkish Government is taking action in legislative and structural terms to address the human rights problems that present a serious obstacle to its membership of the EU. It has made its zero tolerance policy towards torture clear. However the use of torture is long and deep-seated in the security forces and it will take time and continued and determined effort to bring it under control in practice. It is premature to conclude that the long established view of the Tribunal concerning the potential risk of torture in detention as per A Turkey requires material revision on the present evidence. However the situation will require review as further evidence becomes available. For the time being as in the past, each case must be assessed on its own merits from the individual's own history and the relevant risk factors as described in paragraph 46 of A (Turkey)

10. Many of the individual risk factors described in A (Turkey)comprise in themselves a broad spectrum of variable potential risk that requires careful evaluation on the specific facts of each appeal as a whole. The factors described in A (Turkey) were not intended as a simplistic checklist and should not be used as such.

11. A young, fit, unmarried person, leaving his home area and seeking unofficial employment in a big city, may not feel the need to register with the local Mukhtar, at least at the outset. Many do not. However, given the range of basic activities for which a certificate of residence is needed, and which depend upon such registration, we conclude that it would in most normal circumstances be unduly harsh to expect a person to live without appropriate registration for any material time, as a requirement for avoiding persecution. This does not necessarily preclude the viability of internal relocation for the reasons described in paragraph 133.13 below.

12. The proper course in assessing the risk for a returnee is normally to decide first whether he has a well founded fear of persecution in his home area based upon a case sensitive assessment of the facts in the context of an analysis of the risk factors described in A (Turkey). If he does not then he is unlikely to be at any real risk anywhere in Turkey.

17. The issued raised is that as part of the appellant’s case the position of the appellant’s brother has to be assessed. Initially the challenge would be that in assessing the appellant and whether the appellant was at risk the judge’s approach to the brother’s evidence has been brought into question by the subsequent findings of fact made in the brother’s case.

18. In essence the appellant’s brother’s case as accepted by the respondent included an acceptance that the brother was a low-level supporter of the BDP, Baris Ve Demokrasi Partisi .

19. The country guidance cases do not refer to the BDP but in April 2014 the BDP merged with the HDP/Hadep.

20. Since the appellant's decision, the appellant's brother's case has been heard and determined. In deciding the brothers case whilst there were a number of credibility issues the judge still found the brother's account credible that he had been arrested and mistreated in the past and that he was suspected of involvement in anti-government politics including possibly with the PKK.

21. The issue to be determined is whether or not the fact that the brother has now been found credible brings into question the findings by the judge in the present proceedings. In that regard I would draw attention to the cases of TK (Georgia) 2004 UKIAT 00149 and Ocampo 2006 EWCA Civ 1276. Whilst in some senses the cases are clearly distinguishable in that each of the cases involved a previous decision were findings of fact were made on whether or not those findings of fact were binding upon and later Tribunal. Clearly in the present case the decision under question is a later decision and what impact that has upon a previous decision made upon the evidence before it.

22. However the case is clearly set down that even in respect of previous decisions judges are entitled to look at the evidence before them and to decide cases upon the basis of the evidence that is before them. That is exactly what the judge has done in the present situation. He has given valid reasons for coming to the conclusion that he has on the basis of the evidence that was before him. The fact that a Tribunal subsequently was either provided with more cogent evidence or better presented evidence does not mean that the findings of fact by the judge on the day are undermined by the subsequent findings.

23. The judge has properly given reasons for his conclusions on the facts. He considered even taking account of the brother's political involvement that that would not impact upon the appellant. The country guidance case makes clear as set out above that the criteria set out are not merely a set of tick list criteria but would have to be considered in context. That is exactly what the judge has done in the present case.

24. The judge clearly has considered the fact that the appellant after allegedly being arrested and detained but merely returned to school. The judge has pointed out inconsistencies in the appellant's account and given valid reasons for finding that the appellant's account is not credible. Even on the brothers account the subsequent raid at the family home did not disclose that there was any interest in the appellant merely in the brother. The judge was entitled to act upon the evidence that was before him and has fully justified the conclusions reached. Accordingly there is no error of law in the decision.

25. It may mean that in consequence of the subsequent decision the appellant may have to apply again to the respondent seeking to claim that he would now be at risk by reason of the fact that his brother has been found to have been arrested and detained and has been found to be suspected by the authorities is involved in opposition politics. However that does not bring into question the findings of fact made by the present judge.

26. The judge has acted upon the evidence that was before him. The judge has given valid reasons for finding that the appellant's account of his personal arrest, detention and mistreatment was not credible and that his claims to have been involved in politics with his father was similarly not credible.

27. The judge has given valid reasons for the conclusions reached. On the basis of the evidence presented the judge was entitled to come to those conclusions. Accordingly there is no error of law in the decision.

Notice of Decision

28. I dismiss the appeal to the Upper Tribunal and uphold the decision of the First-tier Tribunal.

Signed Date 23/6/2017

Deputy Upper Tribunal Judge McClure