



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/02197/2017**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 19 December 2017**

**Decision & Reasons
Promulgated
On 01 February 2018**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

**EA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Patyna, instructed by Montague Solicitors LLP
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Turkey. He was born on 15 November 1999. He came to the United Kingdom on 11 May 2016 on a study visa, and claimed asylum on 1 August 2016.
2. In his witness statement he said he became involved with the HDP in 2014 and supported them in distributing leaflets. In August 2015 he was grazing his animals when PKK guerrillas approached him and they shared food. The next day his home was raided and he was detained,

fingerprinted and photographed. He said he was assaulted and questioned and he was released the next day having denied meeting PKK members.

3. In March 2016 he was approached by PKK fighters who gave him money to buy goods and he and some friends did so and one friend was arrested. He left his village at that point and went to Istanbul where he made the visa application which led to him coming to the United Kingdom. He learnt via a telephone call from his father on 14 July 2016 that his friend had been arrested on 10 July and the appellant's home had been raided on the same day. He said that there had subsequently been phone calls from his father to say that the gendarmes had been asking for him on 16 July and 22 August.
4. Due to the appellant's age the Home Office contacted the telephone number given on his Visa Application Form for his father. It was recorded that he said that he could not meet his son at the airport due to political reasons and Turkey was not safe for his son. Although the visa address suggested he lived in Istanbul and had done for five years, he said he had never lived there but the address might have been his son's address when he was in Istanbul. He said at one point that his son had worked in Istanbul but when asked about the business said he did not know and was not sure.
5. In his asylum interview the appellant said his father was a farmer and when he left school he helped his father. He said he joined as a member of the BDP which was the same as the HDP after 2014 and attended youth branch meetings.
6. He referred to an arrest warrant which he said he had not seen but he had heard it over the phone. As regards the reference in the visa application to him living with his parents in Istanbul for five years he said the agent took care of everything and he just gave the agent documents and had only ever been to Istanbul for a week prior to that. As to why his father would say he had been living and working in Istanbul prior to leaving he said perhaps his father was afraid.
7. In oral evidence the appellant again said that the agent had filled in the forms and he had simply given him money. He said his father had not written a statement because he spoke to him on the phone and told him everything and it had never come to his mind to get a separate letter with the documents. He accepted that the visa information was wrong. There had not been enough evidence to detain him following the incident in August 2015. His father had told him that an arrest warrant had been issued for him. He said he was still in contact with his father from time to time and last spoke to him on 2 January 2017. He said his father had posted documents to him but he could not remember when he received them. The judge asked him where the warrant was and he said there was no official document but they had been asking for him verbally. When it was put to him that he had said there had been an arrest warrant he said

it was a misunderstanding and he meant they were looking for him. He was required to go to the nearest police station.

8. He referred to his uncle Mr MA, and he had known that he had left the United Kingdom having had political problems like the appellant. He was asked whether his father was political and said he was and that he attended party meetings for the HDP. He did not know if his father was a member but his father was in the adult group and he was in the youth group. He said that the second encounter with the PKK members occurred in the village when somebody came to his home and asked him to go to a quiet place and then they asked him things. He was referred to his answers at interview at questions 42 and 52 and said he was at home in the evening and someone from the village came and asked him and two other friends and they were taken to a quiet part of the village where they were given money and asked to buy items for the PKK.
9. The judge also heard evidence from Mr A who said he was a refugee because he had been a student working for the HDP and a close relative had joined the PKK. As this relative had a similar name to his he was detained on a number of occasions. He said he spoke to his sister every week. He had been a member of the HDP. He did not know if his sister was a member as he had never asked, but he knew the appellant's father was a member because they attended the same demonstrations. His sister had told him of the appellant's problems and she had been hiding him. She had told Mr A what they needed to do and had concluded there was no safe way the appellant could remain in Turkey. He knew the appellant had had problems and his sister was scared. He was not aware of anything specifically happening to the appellant. He then said he was told the appellant had been detained once on 16 August 2015 and he said his sister had told him about this. He had found out the appellant was coming to the UK the week after he arrived and then said he knew he was coming and he was on his journey. His sister had mentioned the arrest warrant. He was asked whether his sister could have sent the warrant to him and he said he did not understand and when asked again, he said people in Turkey were having a lot of problems and if they stopped talking he would never finish. He had not asked if the appellant's mother had any problems after the appellant left.
10. In his conclusions the judge noted in the Asylum Interview Record the appellant had not said his father was a member of the HDP though the witness done so, and nor that his father was involved in HDP politics though he had said this subsequently in his witness statement. He had said he had introduced himself to the party. The judge did not find his oral evidence credible that he had not asked his father if he was a member. In his second witness statement he had said all his family members were supporters which the judge considered to some extent contradicted his oral evidence that he did not know if his father was a member. He noted the overall context of the claim that members of the family had been granted status in the UK and the appellant's sister had recently joined the PKK. The judge also considered that the appellant's general knowledge of the HDP was unsatisfactory. He attached no weight to the documents

produced to support the appellant's membership of the HDP and the adverse interest in him. A letter from the Mukhtar was handwritten and had no official header to show its provenance. A membership letter was not a membership card and did not say when the appellant joined or the level of his activity. There was no evidence from the appellant's father to confirm the appellant's membership. No original documents had been provided. The judge did not therefore consider it to be reasonably likely that the appellant was an HDP member as he claimed.

11. The judge considered that the visa application for the United Kingdom must have been in contemplation for many months bearing in mind the fact that there were two visa applications, the appellant had said his father and mother had to consent and financial information was needed from his father and the Entry Clearance Officer had noted sums of money being transferred to the appellant's father's business bank account as far back as August 2015 which was before the appellant applied for a passport in October 2015. The judge considered that the visa application's inaccuracies were a consequence of him being deliberately misleading. Nor did the judge accept it to be reasonably likely that a villager would see the appellant assisting the PKK, given that it was a PKK supporting area. There was no evidence for the appellant's claimed hospital treatment and medication. Nor did the judge find it reasonably likely he would be given a warning and released given that at the time tensions were at a very high level.
12. The judge also noted an inconsistency in the appellant's evidence as between the PKK either coming to his house and asking him to go to another house or alternatively meeting him in the street. The inconsistency had not been explained. It was also not clear why the PKK could not do their own shopping or ask other members or their own family members to do it for them and why they would ask a 15 year old boy to do it. The account of there being an arrest warrant was inconsistent and contradictory in the judge's view. It was relevant to note the lack of any evidence from the appellant's parents.
13. The judge also found the evidence of Mr A to be unsatisfactory. It was not credible that he would not remember the appellant's detention until having given two negative responses and he had also contradicted himself about whether he knew the appellant was coming to the United Kingdom. He had referred to the appellant as being a "fake" student and that was regarded also as being telling.
14. The judge drew matters together at paragraph 52 and was not satisfied that the appellant's account of his activities in Turkey for the HDP, his arrest and his being asked to help the PKK which led to adverse interest from the authorities was reasonably likely to be true. He considered the claim to be fabricated. No Article 8 claim had been made. The appeal was dismissed.
15. The appellant sought and was granted permission to appeal on renewal on the basis that the judge had not made a specific finding as to whether the

appellant's family members, in particular his sister, were supporters of the HDP/PKK. Reference was made to the country guidance in IK [2004] UKIAT 000312 including a relevant factor being whether the appellant has family connections with a separatist organisation and risk as a failed asylum seeker. There was a risk of detention and therefore of ill-treatment.

16. At the hearing Ms Patyna adopted and developed the points made in her skeleton argument. As a preliminary issue she sought to amend the grounds to challenge paragraph 42 of the judge's decision which she argued was deficient in the way in which the written evidence was considered and the judge had not properly applied the Tanveer Ahmed guidance. She argued that the findings were based on plausibility and had been seen from a UK context.
17. This application was resisted by Mr Tarlow who argued that it was made very late and there was no material error in paragraph 42.
18. Ms Patyna argued that the finding was critical with regard to the appellant's risk profile. Three items of documentation had been provided.
19. I ruled that it was too late for the grounds to be amended. Although I accept that Ms Patyna has come into the case late, it is clear that those instructing her have been involved since at the earliest 12 September 2017 when the permission to appeal application was put in and there has therefore been ample time prior to the date of hearing for an application to amend the grounds to be made.
20. In her submissions Ms Patyna referred to paragraph 46 of the decision of the AIT in A (Turkey) [2003] UKIAT 00034, adopted subsequently by the Immigration Appeal Tribunal in IK. There were set out at paragraph 46 a number of factors which were considered to be material in giving rise to potential suspicion in the minds of the Turkish authorities concerning a particular claimant. For the purposes of this case the particularly relevant factor is (f): "whether the appellant has family connections with a separatist organisation such as KADEK or HADEP or DEHAP". The Tribunal had gone on to say at paragraph 47 that this was not a checklist but assessment that the claim must be in the round bearing in mind matters set out at paragraph 46, the central issues always being the question of real risk on return of ill-treatment amounting to persecution or breach of a person's Article 3 rights. It was also emphasised that the existing political and human rights context overall was a matter of significance.
21. Ms Patyna made the point that the appellant is young and Kurdish and a failed asylum seeker and that it was also accepted he came from a family with a history of political involvement and it could not be said for sure that he would not be at risk on return. Reference was made to paragraph 86 in IK where it was said that it would be for the judge in each case to assess what questions were likely to be asked and how a returnee would respond without being required to lie. If the answers the appellant might give could give rise to suspicion then there was a real risk of torture or ill treatment in detention.

22. The main point was that there was no clear finding about the appellant's family's political involvement, that being in particular his parents and sister which had led to the authorities attending his home. The judge had failed to take into account these matters and what questions and answers there would be for the appellant and therefore the whole assessment of risk on return was flawed. The judge had not said that he did not believe what Mr A had said had happened to him. This had to be seen with the appellant's statement about his family including his sister joining the PKK. In his statement he had said that his sister had joined the PKK seven months ago in February 2016. He also said that this had become known in the village and after this the gendarmes had come to their home and asked about her whereabouts and asked his parents a lot of questions. The judge had not made an explicit finding as to whether the family were supporters. There was no mention of the crucial issue of the degree of the sister's involvement and the consequences. It was necessary to go back to the **IK** guidance as a relevant risk factor. The judge had made no finding about the family. What he said at paragraph 53 did not relate to what the appellant's evidence was. Reference was made to paragraphs 2 and 3 of the appellant's statement. No explicit finding had been made about the sister and risk on return as a member of a family with a history of political involvement. Not enough had been said by the judge about the appellant's ethnicity. He had not referred to **IK** or **A** or to the current political context in Turkey in assessing risk. It seemed the judge had not engaged with this matter nor was he aware as to how risk was to be assessed in circumstances such as the appellant's. There was a material error of law with regard to the family involvement.
23. In his submissions Mr Tarlow argued that this was a matter of disagreement only. The judge at paragraphs 40 and 41 had encapsulated the basis of the claim and his findings too. These were findings he was entitled to make and it was for him to assess the evidence for each conclusion. There was nothing perverse or unreasonable in the findings. He had addressed the evidence with regard to the uncle and had assessed matters as he had said he would do. With regard to the conclusion at paragraph 53 the judge had done exactly what was expected of him and certainly had taken the family including the sister's activities into account.
24. By way of reply Ms Patyna argued that the decision was based on a wrong premise that could only succeed if the appellant's detention was believed but the country guidance demanded more. It was therefore not open to the judge to conclude as he did. He had not dealt properly with the family issues. He had not rejected the uncle's evidence with regard to his experiences but only what he said about the appellant.
25. It is common ground that if the determination was found to contain an error of law or errors of law it would need to be remitted for a full rehearing before a First-tier Judge.
26. I reserved my determination.

27. I think that Ms Patyna has identified a material error in the judge's decision in this case. He did not deal with the issue of the appellant's sister and the risk of adverse interest in him on her account. It is clear that his evidence was that she joined the PKK in 2016, and a risk factor as identified in **IK** is whether the appellant has family connections with a separatist organisation and this needed to be borne in mind together with the appellant's Kurdish ethnicity. Accordingly I consider it has been shown that the decision is flawed by a material error of law and accordingly it will require to be reheard and a fresh decision made in the First-tier Tribunal at Taylor House.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.



Signed

Date: 29 January 2018

Upper Tribunal Judge Allen