



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/03836/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 17 April 2018**

**Decision & Reasons Promulgated
On 24 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

**MR UG
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Sandhu, instructed by Montague Solicitors LLP
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The appellant in this case is a citizen of Turkey born on [] 1991, who appealed to the First-tier Tribunal against the decision of the respondent dated 5 April 2017 to refuse to grant his protection claim and to give directions for his removal. In a decision and reasons promulgated on 8 December 2017, First-tier Tribunal Judge Manyarara dismissed the appellant's appeal.

2. The appellant appeals with Upper Tribunal permission on the following grounds:

Ground 1: That the judge's plausibility findings were flawed and that they were not supported by objective evidence and the reasoning fell short of the guidance in **HK v SSHD [2006] EWCA Civ 1037**, in that the fact that a story may seem inherently unlikely does not mean it is untrue.

Ground 2: Failure to reach a reasoned finding in respect of the appellant's claimed first detention. The appellant claimed to have been detained on 3 January 2012 and this was inconsistent with the date of the party's foundation in 2013; this ignores the appellant's claim at the hearing. Although the appellant made reference in his asylum interview to his first detention having taken place after the party's formation, he explained at the hearing that this was an error and this was addressed at paragraph 10 of the appellant's witness statement. It was submitted that the judge's findings did not engage with the appellant's statement and fell foul of the requirements as set out in **Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC)**.

Ground 3: Erroneous reliance on the respondent's guidance – it was submitted that the judge had conflated the question of credibility with risk on return and had not applied **IK (returnees - records - IFA) Turkey CG [2004] UKIAT 00312**.

Error of Law: Hearing

3. Mr Sandhu relied on the grounds for permission. He submitted that the risk factors in **IK** had not been properly considered. A number of criteria can inform an appellant's risk profile. The background information confirms that the *modus operandi* of the Turkish authorities is to detain and release. Similarly, in relation to the judge's findings as to the appellant's claim he had obtained medical treatment, there was background contrary information in relation to some detainees receiving medical treatment when detained and there is nothing inconsistent in the appellant's account that he was taken to see one of their own doctors in order that he could not take an action against them. In relation to the negative credibility finding that the appellant was detained in January 2012 was with the party's foundation in 2013, Mr Sandhu submitted that in essence HDP was the same party as BDP and that the appellant had corrected this in his witness statement and that the Tribunal had just considered what the appellant had said in his interview as opposed to the witness statement.
4. Ms Everett noted that at [36] the judge had found in the alternative that even if the appellant did have political associations with HDP since 2012 he was an ordinary supporter and there was no risk. In relation to the preceding paragraph, [35], Ms Everett did not accept Mr Sandhu's

submission that the two political parties were essentially the same and submitted that the judge was entitled to reach the decision he did; considering someone in the situation of the appellant who claimed to be intimately involved with these parties and had been an active supporter, it was open to the judge to take into consideration his lack of knowledge including in relation to the dates of foundation of the party.

5. In relation to the contention that the judge failed to deal with the appellant's explanation as to why he was given medical treatment, Ms Everett accepted that the appellant had offered an explanation in relation to why he was taken to see a doctor whilst in detention, so that the authorities could cover themselves and not take action against them, which the Tribunal did not address or give any reasons why this was rejected. It was Ms Everett's submission that this error was not material. She submitted that at [39] the judge had again made, in essence, alternative findings that even if the appellant's account was credible that he was detained on three occasions, it was not credible that the appellant was not apprehended when he left Turkey on his own documentation having failed to report, despite claiming that the Turkish authorities were still interested in him to the extent that they are still visiting his home.
6. Mr Sandhu, in reply, submitted that the case did turn on the issue of the medical treatment and the judge's failure to turn her mind to the appellant's explanation as to why he was taken to see a doctor. In addition, the appellant had always maintained he was a low-level supporter. However that lack of knowledge did not diminish his allegiance and his account of what happened objectively was accepted. He submitted that there was no embellishment and in terms of the treatment that would be given it is not low-level. The judge had essentially adopted the Reasons for Refusal Letter and that was an error.

Error of Law: Discussion

7. The appellant in this case claimed to be at risk as a result of his political opinion. He claimed that he was a supporter of the HDP Party and as a result was wanted by the authorities in Turkey as a result of having failed to comply with reporting conditions after his last release from detention.
8. I do not accept the submission that the judge failed to consider the appellant's explanation, including at paragraph 10 of his witness statement, in relation to his detention. There was some discussion at paragraph 10 of the witness statement as to the appellant giving the date as 3 January 2012 whereas it was recorded as 2 January 2012. The appellant went on to state: "I admit that I made a mistake, since HDP only declared its foundation in October 2012" although the appellant stated that he was asked a leading question that he was detained when the party was formed.
9. The Tribunal sets out that the significance of the appellant's lack of knowledge in relation to the foundation of HDP is relevant because he

relies on his association with HDP as the basis for the initial interest in him by the Turkish authorities. The judge also found it not credible that the appellant would have been arrested in relation to a party that was yet to be formed at the time of his first arrest. The appellant relied on the fact that the BDP Party was operating at that time and he stated in his witness statement (at paragraph 6) that the need for a new party to be established was discussed in 2012 (with an application in October 2012 and its foundation in October 2013) and that although BDP was not officially closed until 2014 “it was clear that BDP was in the process of closing”. However there was nothing in the information relied on to counter the judge’s reliance on the background information that BDP was an independent party that merged with HDP in 2014, that HDP was formed in 2013 and that the appellant’s claimed detention date lacked credibility in that context. Even taking Mr Sandhu’s point at its highest, that the parties were essentially a reincarnation of each other (which I note, although the appellant claimed to have previously supported the BDP, was not explicitly relied on by the appellant before the First-tier Tribunal), that does not adequately address the appellant’s lack of knowledge as a committed, albeit ordinary, supporter. The judge adequately directed herself and specifically noted (at [41]) that all oral and documentary evidence was considered cumulatively. The reasoning of the First-tier Tribunal was adequate in this regard.

- 10.** Although Mr Sandhu’s submission was essentially that the parties were the same, in essence it is difficult to see how the Tribunal can be criticised for reaching the findings on the evidence before it, that the party was not formed until 2013 (having submitted an application in October 2012) and that in this context the appellant’s claim, as a supporter of HDP who was allegedly detained, lacked credibility.
- 11.** In any event, even if the application (to found the party) was submitted in 2012, despite the fact the party was not formed until October 2013 and that BDP merged with it in 2014 this still does not adequately explain how the appellant was detained on 3 January 2012 in respect of his association with a party that had not yet been formed. The Tribunal was entitled to reach the conclusions it did on the basis of the evidence before it. In any event, as correctly identified by Ms Everett, the Tribunal reached sustainable findings in the alternative that, even if the appellant’s claim to have had political associations with HDP since 2012 was correct, as an ordinary supporter he did not have a significant profile and that as someone who was not a member, his name would not be on record.
- 12.** Whilst Ms Everett accepted that the judge appeared not to have taken into consideration the appellant’s claims as to why he was taken to see a doctor, essentially so that the authorities could protect themselves from actions against them, any error is not material given the weight of the credibility findings in their totality including that the judge found that in his oral evidence the appellant confirmed that he himself did not seek any independent medical attention which the judge considered in the round in

reaching the finding that the appellant's account was completely lacking in credibility.

- 13.** The Tribunal went on to make sustainable alternative findings including that even if the appellant were to be believed and he had been detained on 3 separate occasions as claimed, it was not credible that despite claiming that the Turkish authorities are still interested in him to the extent that they are visiting his home, he was not apprehended when he left Turkey, on his own documents, having failed to report. Those findings have not been substantively challenged and were open to the judge.
- 14.** The judge correctly considered and applied the risk factors in **IK** and reached findings that were properly open to her. The Judge's findings do not suggest that the only people who could be detained and ill-treated were high profile party members but took into consideration that ordinary members of HDP are not generally (my emphasis) at risk. The Tribunal addressed all the relevant factors (including the appellant's activities in the UK) and made adequate sustainable findings. Read in its entirety the Tribunal decision demonstrates an awareness therefore that a number of criteria can inform an individual's risk profile, but tribunal the Tribunal in this case was not satisfied that such a risk was engaged in the appellant's case.
- 15.** It was very clear why the First-tier Tribunal decided the case against the appellant and the main points in dispute were addressed. The duty to give adequate reasons is just that, not a counsel of perfection (see **MD (Turkey) [2017] EWCA Civ 1958**).

Notice of Decision

- 16.** The decision of the First-tier Tribunal does not disclose an error of law such that it should be set aside, and shall stand. The appeal by the appellant is dismissed.

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: 23 April 2018

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT
FEE AWARD

No fee was paid, the appeal is dismissed and therefore no fee award is applicable.

Signed

Date: 23 April 2018

Deputy Upper Tribunal Judge Hutchinson