



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/08617/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 12 November 2018

Decision & Reasons Promulgated  
On 03 December 2018

Before

**DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN**

Between

**F T**  
**(ANONYMITY DIRECTION MADE)**

Appellant

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr P Haywood, Counsel instructed by Montague Solicitors LLP

For the Respondent: Mr S Whitwell, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Turkey of Kurdish ethnicity born on 27 November 1992. He is appealing against the decision of First-tier Tribunal Judge Roopnarine-Davies promulgated on 24 August 2018 dismissing his appeal against the respondent's refusal of his asylum and human rights claim.
2. The appellant claims to be at risk because he was a member of the People's Democratic Party (HDP) and a supporter of the PKK. He claims that amongst other things he distributed leaflets for the HDP, joined protests and attended seminars. He

claims to have been detained on three occasions and that he has been subjected to torture and extreme ill treatment. He also claims that family members have been arrested and imprisoned for involvement with the PKK.

### **Decision of the First-tier Tribunal**

3. The judge did not find the appellant's account credible. At paragraph 21 the judge stated that his evidence "lacked substantive detail, was internally inconsistent and implausible in parts".
4. The reasons given by the judge for reaching this unfavourable view of the appellant's evidence include the following:-
  - (a) The judge found that the appellant gave an inconsistent account of whether he was a member or merely a supporter of the HDP. At his screening interview he claimed to have only been a sympathiser, but subsequently he claimed to have been actively involved since 2014 and to have applied for membership in 2016.
  - (b) The judge found damaging to the appellant's credibility that he claimed to be unable to obtain confirmation of his HDP membership because senior members of the party who acted at the time were either detained or had left the country.
  - (c) The judge found that the appellant was unable to offer details of HDP's ethos other than in the most general terms.
  - (d) The judge found there to be "scant evidence" that the appellant required medical attention after being subjected to brutal treatment. The judge also found that the gaps between the three claimed detentions undermined the account given that he claimed to have been actively involved with HDP and suspected to have links to the PKK.
  - (e) The judge found contradictory that the arrests of the appellant in 2015 and 2017 were said to be for the same thing, which was that his name appeared in a notebook found in a martyr's cemetery. The judge considered that this lacked credibility in the context of his claim and of his claim that relatives were sentenced for the same reasons.
  - (f) The judge found damaging to the appellant's credibility that there was "scant evidence" that his mother and six brothers were harassed or harmed because of the family connection to the PKK.
  - (g) The judge noted that the appellant had adduced evidence purporting to be from the Serious Crimes Court in Turkey which was said to concern the convictions of relatives of the appellant. The judge stated at paragraph 29 that several pages of the relevant material were untranslated and that he attached "scant weight to the claim that [the appellant's] relatives have been charged and imprisoned for PKK involvement and that this was a reason for his arrests. In any event he has not shown to the required standard that he is related to them".

5. In light of the credibility findings, the judge concluded that the appellant had not shown he would be at risk on return to Turkey or that the risk factors identified in *IK (Returnees - Records - IFA) Turkey CG [2004] UKIAT 00312* had been established.
6. At paragraph 27 the judge made a further finding relevant to the assessment of credibility. He stated :-

“Further he was released on each occasion without charge or reporting conditions as was the modus operandi of the authorities if he was genuinely believed to be a supporter of the PKK. At the time of his claimed arrest in 2017 a State of Emergency existed which had been imposed at the time of the failed coup attempt in July 2016 when supporters of the HDP were arbitrarily detained and imprisoned. That this was not the experience of this appellant reinforced the impression that he was not truthful.”

### **Grounds of Appeal and Submissions**

7. The first ground of appeal argues that it is unclear what the judge meant at paragraph 27 where it was stated:-

“Further he was released on each occasion without charge or reporting conditions as was the modus operandi of the authorities if he was genuinely believed to be a supporter of the PKK”.
8. The grounds state that it is unclear what the judge meant by this statement, but that it appears that the judge intended to say that it was not plausible that the appellant would have been released without charge and/or reporting conditions if the authorities had a genuine interest in him. The grounds argue that this is inconsistent with *IK* where it is recognised that people of interest to the authorities may be detained and released thereafter without judicial involvement.
9. The second ground of appeal also argues that the wording in paragraph 27 is unclear and/or internally contradictory. Issue is taken with the following statement by the judge:-

“At the time of his claimed arrest in 2017 a State of Emergency existed which had been imposed at the time of the failed coup attempt in July 2016 when supporters of the HDP were arbitrarily detained and imprisoned. That this was not the experience of this appellant reinforced the impression that he was not truthful.”
10. It is argued that the appellant’s case was that his last detention took place as a result of a raid at the time when security in Turkey was tightened following the 2016 coup and therefore the judge was mistaken to state that it was not the appellant’s experience to be detained during this period.
11. This ground of appeal also takes issue with the judge finding as damaging to the appellant’s credibility his claim that senior members of the HDP were unavailable to

provide evidence of his membership. It is argued that there is no support for this assertion and that the country information shows that thousands of HDP members and supporters have been detained and imprisoned in Turkey in recent years.

12. It is also argued that the judge erred by finding that the appellant had not shown that he was related to the relatives who he claimed had been arrested. The grounds state this was not raised as an issue at the hearing and the judge gave inadequate reasons to support this finding.
13. The third ground of appeal maintains that the judge failed to reach a clear finding as to whether she accepted that the claimed arrests of the appellant's family members took place. It is argued that a finding in respect of the criminal cases against family members was necessary in the context of the overall claim as this issue was material to credibility and the assessment of risk.
14. Before me, Mr Haywood focussed on paragraph 27 of the decision. He interpreted the first part of the paragraph as stating that the appellant's claim lacked credibility because he claimed to have been released without charge or reporting conditions. This, argued Mr Haywood, is inconsistent with country evidence which shows that short-term detention without charge or reporting conditions is commonplace in Turkey. Therefore, the fact that the appellant claimed to have been released on each occasion without charge should support, rather than undermine, the credibility of his case.
15. Mr Haywood was also critical of the second part of paragraph 27 where the judge stated that it was not the appellant's experience to have been arrested and detained at around the time of the failed coup in July 2016. He argued this was plainly wrong given that the appellant's claim was that he was arrested and detained in May 2017.
16. Mr Haywood also argued that the judge failed to give reasons to support his decision to attach scant weight to the documentary evidence which showed that the appellant's relatives were charged and imprisoned.
17. He also argued that it was unfair to attach minimal or no weight to the evidence about the arrest of his relatives on the basis that he had not shown he was related to them. Mr Haywood submitted that this issue had not been raised at the hearing and that the appellant had been consistent throughout his claim that relatives had been arrested. He argued that this is a fairness point; his submission being that it was unfair to hold against the appellant something that was not raised at the hearing and which he had no notice of being at issue. He also argued that the appellant's claim was that the level of his family's connection with the PKK was substantial and that this should have affected the approach to the evidence.
18. The response of Mr Whitwell, in short, was that the judge gave a number of reasons for finding the appellant's account not credible and that taken together these are sufficient to justify the conclusion reached.

## Analysis

19. This appeal turned on the judge's assessment of the appellant's credibility.
20. As highlighted by the Upper Tribunal in *KB & AH (credibility - structured approach) Pakistan [2017] UKUT 00491* assessment of credibility is highly fact sensitive and can be assisted by considering indicators such as sufficiency of detail, internal consistency, external consistency, and plausibility.
21. It is clear that the judge has considered the internal consistency of the appellant's account (she found that he had been inconsistent about his membership of HDP).
22. It is also clear that the judge had regard to the plausibility of the appellant's account, finding aspects (such as his claim to be unable to obtain confirmation of his HDP membership) to lack plausibility.
23. It is also apparent that from the decision that the judge also took into consideration the level of detail given by the appellant (finding, for example, it damaging to his credibility that he could not give details of HDP's ethos).
24. In my view, the judge's reasons for not accepting the appellant's account, as summarised above at paragraph 4, were fact sensitive, addressed most of the indicators identified KB & AH, and were sufficient to support the findings she reached.
25. I arrive at this conclusion even though I accept Mr Hayward's interpretation of paragraph 27 of the decision. I agree with Mr Hayward that the judge appears to be treating as damaging to the appellant's credibility that he claims to have been released without charge (even though this is not consistent with country evidence) and that the judge appears to be mistaken as to the appellant's claim to have been arrested after the 2016 coup. However, these errors are not material as the judge gave other reasons, which do not rely on and are independent of the analysis in paragraph 27, for finding the appellant lacked credibility.
26. Mr Hayward argued with some force that it was unfair for the judge to find the appellant had not established he was related to the individuals who he claimed were arrested, given that this was not raised at the hearing and therefore the appellant would not have appreciated it was an issue. However, the difficulty with this argument is that the judge's finding that the appellant was not related to the arrested individuals was made in the alternative, the judge having already found that little weight was to be attached to the documents given that they were only partially translated. The finding about the appellant not being related to the arrested individuals was therefore not material.
27. In conclusion, I am satisfied that the judge gave adequate reasons for finding that the appellant's account lacked credibility and that she reached a conclusion that was open to her on the evidence.

**Notice of Decision**

- a. The decision of the First-tier Tribunal does not contain a material error of law and shall stand.
- b. The appeal 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 his 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



Deputy Upper Tribunal Judge Sheridan

Dated: 28 November 2018