



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/11284/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 5 April 2018

**Decision &
Promulgated**

On 16 April 2018

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE LATTER

Between

AC

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Mackenzie, counsel.

For the Respondent: Mr I Jarvis, Home Office Presenting Officer.

DECISION AND REASONS

An order has been made under Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead to the appellant being identified. Failure to comply with this order could lead to a contempt of court.

1. This is an appeal by the appellant against a decision of the First-tier Tribunal dismissing his appeal against the respondent's decision of 17 October 2017 refusing his application for asylum.

2. The appellant is a citizen of Turkey born on [] 1977. He arrived in the UK on 22 June 2017 and applied for asylum the same day. He claimed that he would be at risk of persecution on the basis of his political opinion as a member of the HDP, which he joined in 2015. He described incidents when he had been detained and ill-treated in March and September 2014. After his second detention the military police threatened that he and his family would be killed if he continued to be active politically. He remained living in his village between 2014 and 2017 when he did not encounter any other problems with the authorities and ceased his political activities. He left for Istanbul in mid-2017 following an incident on 5 May 2017 when, after he had bought items for members of the PKK, the authorities came to his family home asking about him and concluded that he had escaped to the mountains and had joined the PKK.
3. The respondent was not satisfied that the appellant was or had been a member of the HDP or that he had been detained and ill-treated. She found that he would be of no adverse interest to the authorities on return to Turkey and his application was refused.
4. At the hearing before the First-tier Tribunal the judge heard oral evidence from the appellant and from a witness called on his behalf. Having reviewed the evidence he said that he was not satisfied that the appellant had given a truthful and accurate account or that he would be at any real risk of harm if returned to Turkey.
5. In the grounds of appeal, it is argued that the judge erred by failing to make a specific finding on whether the appellant was a member of the HDP, particularly in the light of his assertion that he had produced at his asylum interview documentary evidence of his membership which was then returned to him by the respondent. The grounds also argue that the judge had been wrong not to accept that the appellant was suspected of going to the mountains to join the PKK simply because he had not been involved in any political activity for three years and that he failed to consider properly the risk factors identified in IK (returnees-records-IFA) Turkey CG [2004] UKIAT 00312.
6. At the hearing before me Mr Jarvis indicated that he had discovered on the respondent's file a copy of the document the appellant said he had produced at his asylum interview relating to his membership of the HDP. He conceded that the fact that there was such a copy, which had not been produced at the hearing, was at least capable of affecting the judge's findings on credibility, particularly in the light of the submission made on the respondent's behalf at [16] that the appellant had not been able to provide any documentation confirming his membership of the HDP.
7. The judge dealt specifically with the issue of the appellant's membership of the HDP in [23] saying that he did not find his explanation of his membership to be credible because he failed to see why he would have become a member in 2015 at a time when, on his account, he had decided to cease being involved in any political activities. At [29] when drawing together the various points made in the case, the judge noted that the

appellant had provided objective evidence in support of his case, but he regarded that as outweighed by the other factors he had identified. Had the document relating to the appellant's membership of the HDP been produced, that would have been another factor for the judge to take into account which, whilst by no means determinative, was capable of affecting the decision on credibility.

8. I am, therefore, satisfied that the respondent's failure to produce the copy document held on file, which I accept was inadvertent, was a procedural irregularity capable of causing unfairness and as such an error of law.
9. I agree with both representatives that the proper course in these circumstances is for the appeal to be remitted for reconsideration by the First-tier Tribunal by way of a full rehearing.

Decision

10. The First-tier Tribunal erred in law. The decision is set aside. The appeal is remitted to the First-tier Tribunal for reconsideration by way of a full rehearing by a different judge.
11. In the light of the issues raised in this asylum appeal, I am satisfied that this is a proper case for an order to be made under rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 and I make an order prohibiting the disclosure or publication of any matter likely to lead to the appellant being identified.

Signed: H J E Latter
April 2018

Dated: 10

Deputy Upper Tribunal Judge Latter