



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/02620/2019

**THE IMMIGRATION ACTS**

Heard at Field House  
On 2<sup>nd</sup> September 2019

Decision & Reasons Promulgated  
On 30<sup>th</sup> September 2019

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

K A  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr M Aslam, instructed by Howe & Co Solicitors  
For the Respondent: Ms S Cunha, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Turkey born in 1991. His appeal against the refusal of his protection claim was dismissed by First-tier Tribunal Judge Anthony on 4 June 2019.

**The Appellant's claim**

2. It is the Appellant's case that he became a member of the Gülen movement when he attended school in Year 6 or 7, and he has been a member since then. He has taken part in meetings and activities, and he has supported military students when he was at university by giving talks and holding meetings. The Appellant throughout the time he lived in Turkey had been subscribing to the Gülen movement's magazines, including Keko, and had a Bylock account. The Appellant also assisted with the

Kimse Yok Mu charity and volunteered to support the Turkish Olympics associated with the Gülen movement.

3. On 15 July 2016, the Gülen movement was blamed as the orchestrator of a military coup. They were then recognised as a terrorist group, Fethullahist Terrorist Organisation (FETO). The Appellant left Turkey in September 2016 on a visit visa issued on 27 August 2016 valid until 27 February 2017. The Appellant applied for further leave to remain under the European Community Association Agreement (ECAA) 2017 and was granted leave from 9 March 2017 until 30 July 2018. The Appellant was granted a further period of leave under the ECAA on 15 July 2018 for a further three years.
4. In December 2018, the Appellant was informed by his father that military personnel had visited the Mukhtar in their village informing him that the Appellant needed to report for military service. The Appellant attended the Turkish consulate in London to defer his military service. He was unable to do so because he was informed that his passport had been cancelled. The Appellant stated that his name had been given by informers to the authorities. The Appellant claimed asylum on 15 January 2019. The Appellant fears return on account of his political opinion.
5. In his witness statement the Appellant stated:-
  - “10. Between 2005 and 2009, I attended Zafer FEN tuition course. This was also affiliated to the Gülen Movement. This was to help me with my studies and also to prepare me for the university entrance exams.
  11. Whilst I was at university, I began staying at the student houses and was appointed as an ‘Abi’ which means Elder brother. I was in charge of four of these student houses and was responsible for the education and welfare of the students in my care. For this role, I had to liaise with senior members of the Gülen Movement as I had to report on the progress of the students in my care. At times during the university, I used to stay in the university student dormitory and provide religious guidance to Gülen Movement students.
  12. I used to attend meetings and invited others to join the movement. In the last year of university, I began undertaking my Abi duties to military students and I continued this for another group of military students after I left university. Being an Abi to military students is a sensitive matter and therefore shows the trust that was placed in me as an Abi by the Gülen Movement. In the investigations by the Turkish authorities after the military coup, they were particularly interested in those in the military and who they liaised with. Anyone found to be in this role, is being treated as a senior FETO terrorist suspect.
  13. I subscribed to Zaman newspaper, which is affiliated with the Gülen Movement. I also subscribed to Sizinti magazine and had the Yagmur

magazine phone application. I also helped 'Kimse Yok Mu' charity which is affiliated with the Gülen Movement. I used to volunteer to support the Turkish Olympics, which was organised by the Gülen Movement.

14. I also used Bylock, which was phone application used by Gülen Movement members. After the attempted military coup, the Turkish government was using evidence of a person having Bylock as to show that they were members of the Gülen Movement."

### **The judge's findings**

6. The judge made the following relevant findings:-

- "18. I find there is conflicting evidence regarding whether the Appellant is wanted by the authorities in Turkey. Firstly, it is unclear as to why the Turkish consulate told the Appellant he was wanted in Turkey when his father was told by the village Mukhtar that he was needed back in Turkey to undertake military service. I find both those statements to be inconsistent with each other. If the Appellant was wanted in Turkey because of his affiliation to the Gülen movement, I find it wholly unlikely that the authorities would want him to undertake military service."
19. The Respondent refers to the fact that the Appellant was able to leave Turkey to travel to the UK in September 2016 and he faced no issues leaving.
20. I have placed significant weight on the fact the Appellant was able to leave Turkey unhindered shortly after the failed coup. At 5.3.4 of the Respondent's Country Policy Information Note (CPIN), it is stated there have been many cases of people involved in Gülenism who have attempted to leave the country but have not succeeded because their passports have been seized or cancelled before they could board the plane. I find the fact the Appellant was able to leave unhindered strongly suggests he is not wanted by the authorities.
21. I have considered the possibility that the Appellant may not have been wanted when he left Turkey but is now a wanted man in Turkey. I have considered the Appellant's account of what happened at the Turkish consulate. If indeed it is true that the Appellant's passport was cancelled, it is unclear to me why his passport was then returned to him by the consulate.
22. The background material confirms that members of the Gülen movement have had their passports cancelled. At 5.3.1 of the CPIN, the case of EK was cited as an example of someone who was detained at a Romanian airport after Turkey had annulled his travel documents. He had been

openly supportive of the Gülen movement. The CPIN goes on to say that several European media outlets have reported on Turks having their passports seized upon visiting Turkish diplomatic missions. The CPIN cites as an example the Turkish consulate in Rotterdam confiscating passports of people it says supported the Gülen movement. Those people have been told that they are listed as wanted fugitives and they will be given a one-day passport to travel to Turkey to appear before the courts to prove their innocence. I find the fact the Appellant's passport was returned to him by the consulate officials suggests that his passport had not been cancelled.

23. I find the Appellant's account of what happened to him at the Turkish consulate to be wholly inconsistent with the background material. If the Appellant's passport had been cancelled when he attended the Turkish consulate, then it is likely that his passport would not have been returned to him and instead confiscated. I find from the background material that the Turkish consulate would upon confiscation of his passport have gone on to issue the Appellant with a one way passport to travel to Turkey to face questions before the courts to prove his innocence. The fact that this did not happen suggests that the Appellant is not wanted by the authorities in Turkey.
24. Ms Imamovich relies on the report by the London Advocacy League which states that the Turkish authorities do not discriminate between low level and high profile supporters of the Gülen movement. The report is from an advocacy organisation and in the circumstances, I find that it is an organisation advocating on behalf of the Gülen movement. I do not find it to be an impartial source of information. The information contained within the report is in my view not facts but submissions and the submissions is in my view not supported by any factual background material.
- ...
26. I have considered paragraph 6.1.2 of the CPIN. I find that this is not specific to members of the Gülen movement. I accept that the authorities in Turkey had a wave of purges but that the purges were directed to anyone who was on the blacklist in particular those whose names were published on the Rezmi Gazette on Facebook and Twitter. I find there is no evidence that the Appellant's name has appeared on a published blacklist.
27. I accept the background material relied on by the Appellant demonstrates that the authorities in Turkey have at its disposal the laws and powers to impose a lengthy term of imprisonment for those who have been charged with anti-terror offences. However, in this case, I find from the evidence before me that there is nothing to suggest that the Appellant has been

charged with such offences or that he is wanted by the authorities in connection with such offences.

28. I find that the Appellant has not discharged the burden of proving that, having regard to background material and his personal circumstances, he is at risk of serious harm on return to Turkey for the reasons I have given above. In reaching these conclusions, I have had regard to the criteria for assessing credibility as set out in part 11 of the Immigration Rules, particularly paragraphs 339HA to 339N, which transpose Article 4 of the Qualification Directive. I find the Appellant is not a refugee."

7. Permission to appeal was granted by Upper Tribunal Judge Stephen Smith on 26<sup>th</sup> July 2019 for the following reasons:-

"1. It is arguable that the Judge's reasoning at [18] was irrational and contradictory, in that the Appellant could arguably not reasonably be expected to explain why the authorities both wanted him for military service in Turkey, while simultaneously having an interest in him on account of his pro-Gülenist views and activities. The Judge arguably based this aspect of her analysis on her own subjective assumption of how the Turkish authorities would act, and arguably did not engage with the explanation provided by the Appellant of the authorities' interest in him (see [10] - [14] of his witness statement).

2. The other grounds have less merit and primarily amount to disagreements of fact with the Judge's reasoning. However, given it is arguable that her analysis of the primary account the Appellant gave of the authorities' interest in him was flawed, it is arguable that the remaining credibility analysis she conducted was tainted. I therefore grant permission on all grounds."

### **Submissions**

8. Mr Aslam submitted that the judge's finding, at paragraph 19, that the Appellant's evidence was inconsistent was a subjective assumption giving rise to an error of law. The judge found that if the Appellant was wanted as a Gülenist then he would not be required to do military service. This was a speculative finding on the part of the judge because there was no country information to suggest that this was in fact the case. Further, it required the Appellant to know what was in the minds of the Turkish Government. The judge assumed how the Government would operate in getting someone to return suspected of being involved in the Gülen movement.
9. Secondly, the judge stated at paragraph 20 that she attached significant weight to the fact that the Appellant was able to leave Turkey unhindered. However, at the beginning of paragraph 21 she stepped back from that position and considered whether the Appellant was not wanted at the time he left Turkey but was now

wanted after his arrival in the UK. Those two positions adopted by the judge were inconsistent.

10. Thirdly, the judge found that the Appellant's passport was not cancelled because the Turkish consulate did not confiscate it. Whilst there was some evidence before the judge of what had happened in other consulates in other countries, there was no evidence as to what the procedure was in the Turkish consulate in the UK. The Appellant had not given evidence that he handed over his passport and it was returned and there was no evidence to suggest how the Turkish consulate in the UK operated in this case. The CPIN did not say that it was common practice for cancelled passports to be confiscated. The judge found that if the Appellant had been at risk on return his passport would have been confiscated. This finding was not open to the judge on the evidence before her because it was not possible to infer that in every case where the passport was cancelled it would have been confiscated. This finding was determinative in the conclusion that the Appellant would not be at risk on return.
11. The judge further failed to consider the Respondent's case accepting the Appellant's activities with the Gülen movement and his association but rejecting his claim to be at risk on return due to his low-level activities. The judge's subjective view was not supported by the background material. The Appellant had been in charge of military students which put him at risk. The Government was interested in those who were perceived to be Gülenists. The Appellant's position with the Gülen movement was senior and he would therefore be a likely terrorist suspect. The judge focused on the manner in which the authorities would or would not behave without having evidence on that point. The judge failed to address the Respondent's case or consider the Appellant's own evidence and failed to make a finding on whether the Appellant's activities were high or low-level.
12. In summary, Mr Aslam submitted that there were three reasons why the judge dismissed the Appellant's appeal: firstly, that he would not have been requested to undertake military service if he was wanted as a terrorist; secondly, the Appellant would not have been able to leave the country if he was wanted; thirdly, the Appellant's passport was not cancelled because it was not confiscated. All three errors were erroneous findings and determinative of the appeal. The judge had not considered other matters as a result of her misplaced focus on the three matters above. The judge had not engaged with the Respondent's central position that the Appellant was a low-level activist which was in fact contradicted by the Appellant's witness statement.
13. Ms Cunha submitted that the judge's findings were not contradictory. The position set out in paragraphs 20 and 21 were alternative positions and depended on how the case was put. The judge considered whether the Appellant was at risk as a result of his Gülenist activities. The Appellant's claim that he was part of the movement and part of the army was considered by the judge in the light of the CPIN which set out how those perceived to be Gülenists were treated. On the Appellant's own evidence, he was not at risk as a terrorist after the coup. At the time of the coup the

Government arrested everyone who was likely to be involved, therefore the Appellant's activities in Turkey had not put him at adverse interest to the authorities. The Appellant had been able to defer his military service in Turkey and was not at risk of harm when he left.

14. The Appellant's evidence that he was able to leave Turkey supported the Respondent's conclusion that he was not a high-level activist in the Gülen movement. The Appellant's case was that as a result of further information obtained by the Government after the coup, even the low-level activities of the Appellant meant that he was now at risk.
15. Ms Cunha submitted that if the authorities wanted the Appellant to return to Turkey there was no need to cancel his passport. Even if they did cancel his passport, because he did not perform military service, there was no reasonable explanation for why it was returned to him.
16. The judge's findings were open to her on the CPIN information and the judge took into account what had happened in the UK, adopting a balanced approach. The judge found that, notwithstanding purges by the Turkish Government, the Appellant had still not demonstrated that his profile with the Gülen movement would put him at risk.
17. The Appellant's case was that his father contacted him about military service, not that he was charged with an offence. The judge took into account the Appellant's evidence. The Appellant had not said he was wanted or that the authorities were looking for him. The judge's conclusion the Appellant was not at risk as a result of his activities in the UK and was not at risk prior to coming to the UK were findings which were open to the judge on the evidence before her. The Appellant had not demonstrated he was at risk on return as a result of his activities with the Gülen movement. The judge did not have to ignore common sense. If the Appellant was of adverse interest or wanted for his failure to complete military service, it would not make sense to cancel his passport.
18. Mr Aslam relied on paragraph 5 of the grounds and submitted that the Appellant was told he had been called for military service by his father in Turkey. He could not pinpoint a date when he was wanted and it was at the point when the Appellant went to the consulate to request his call-up to be deferred that he found out that he was wanted. It was not known at this stage when his father was asked about military service. The judge failed to make a finding on whether the Appellant was considered to be a high-level activist.
19. The judge found that the Appellant was not wanted by the authorities when he left because he had no problem leaving Turkey, whereas the Appellant's evidence was that his activities were not known at that stage. As of December 2018, when the Appellant visited the Turkish consulate in the UK, it was confirmed to him verbally that he was wanted by the Government not because of his failure to complete his military service, but because of his activities with the Gülen movement. Whether the

Appellant's passport was confiscated after it was cancelled was not relevant. It did not follow that, because that was the procedure adopted in Rotterdam, the same procedure would be adopted in the UK. At best this point should be a neutral one because the CPIN gave an example of a couple of incidents in Rotterdam rather than a consistent practice throughout the Turkish consulates. It was dangerous to infer that if the Appellant was at risk his passport would have been cancelled and confiscated.

### **Conclusion and Reasons**

20. It is the Appellant's case that he was involved with the Gülenist movement whilst in Turkey in assisting military students as well as being a subscriber to Gülen magazines and applications. The Appellant's case is that he was of no interest to the authorities before he left Turkey and was able to come to the UK on a visit visa he obtained in August 2016 shortly after the military coup in July 2016. The Appellant was not wanted by the authorities prior to leaving Turkey or in the first two years after his arrival in the UK. The background information in the CPIN demonstrated that the authorities in Turkey had a wave of purges directed at anyone who was on a blacklist.
21. It is the Appellant's case that he was not wanted by the authorities until December 2018 when he went to the Turkish consulate in order to defer his military service. It was at that stage that he was informed he was wanted as a result of his Gülen activities. There was no evidence from the Turkish consulate to confirm the Appellant's evidence and the Appellant's evidence was contrary to the procedure adopted at other Turkish consulates, in particular the one in Rotterdam.
22. The Appellant's case, at its highest, is that he has been named by others who have been interrogated by the Government and he is wanted by the authorities for his involvement with the Gülen movement because he is perceived as a terrorist threat as a result of the military coup. The Appellant made his claim because he was told by the Turkish consulate that his passport had been cancelled. However, the behaviour of the Turkish consulate in respect of other perceived Gülen activists was to cancel their passports and issue them with a one day travel document, and in some cases confiscate the cancelled passport.
23. The Appellant has made an unsupported assertion that he is wanted by the authorities because of his visit to the Turkish consulate. There was no evidence from the Turkish consulate to show that his passport had in fact been cancelled or to support his claim to be wanted by the authorities as a perceived terrorist.
24. The judge found that the Appellant's assertion was not credible for several reasons, for which she has been criticised by Mr Aslam. The judge's finding at paragraph 18 that the request to undertake military service was inconsistent with being wanted as a terrorist was not a subjective assumption material to the overall decision. Her inference that it would be unlikely for the Turkish authorities to request him to



complete his military service if he was a suspected terrorist was a reasonable inference to make.

25. I am not persuaded by Mr Aslam's submission that the judge has made contradictory findings at paragraph 20. The judge found that the Appellant was of no interest before he left Turkey because of his association with the Gülen movement and then went on to consider the position of whether he was in fact wanted as a result of his support for the Gülen movement whilst in the UK. The Appellant's own claim is that he was of no interest to the authorities until December 2018 when he went to the Turkish consulate.
26. The judge gave adequate reasons for rejecting the Appellant's unsupported account of what happened at the Turkish consulate on the basis that it was inconsistent with the background material of the behaviour of the Turkish consulate in other countries and the treatment of perceived Gülenist supporters in Turkey. This finding was open to the judge on the evidence before her.
27. The judge's reasons for rejecting the Appellant's claim were adequately explained. The Appellant's case, taken at its highest, is that he has been a supporter of the Gülenist movement whilst in Turkey, but that his activities did not bring him to the attention of the authorities, and he was able to come to the UK on a visa issued by the Government. He has been requested to complete military service. The Appellant has at no stage claimed that his family have been visited by the authorities or that he was wanted in his local area.
28. The basis of his claim to be wanted by the authorities arises as a result of his visit to the Turkish consulate in December 2018. The judge rejected the Appellant's account of that visit because it was unsupported by evidence which the Appellant ought to have been able to produce if his account was true, and it was inconsistent with background evidence as to what happened in Turkish consulates in other countries.
29. I am not persuaded by Mr Aslam's submission that the judge was not able to rely on the way the Turkish Government behaved in other countries in assessing the Appellant's credibility. The onus is on the Appellant to produce evidence to support his case. He has failed to produce evidence to show that the procedure in the UK was in any way different and it is reasonable for the judge to infer that the Turkish Government would act consistently in relation to perceived terrorists, namely that their passports were cancelled and/or confiscated and those out of country were issued with one-way travel documents. It is not the Appellant's case that this has happened to him.
30. Accordingly, the judge's conclusion that the Appellant has failed to show that he was of interest to the authorities or at risk on return as a result of his activities with the Gülen movement was a finding which was open to her on the evidence before her. I find that there was no error of law in the decision promulgated on 4 June 2019 and I dismiss the Appellant's appeal.

**Notice of decision**

Appeal 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 her or any member of her 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.

*J Frances*

Signed

Date: 27 September 2019

Upper Tribunal Judge Frances

**TO THE RESPONDENT**  
**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

*J Frances*

Signed

Date: 27 September 2019

Upper Tribunal Judge Frances