



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/08228/2018**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 7 February 2019**

**Decision & Reasons
Promulgated
On 13 February 2019**

Before

Deputy Upper Tribunal Judge MANUELL

Between

**FIRAT [S]
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Panagiotopoulou, Counsel
(instructed by Montague Solicitors LLP)
For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed with permission granted by Deputy Upper Tribunal Judge Grimes on 21 December 2018 against the determination of First-tier Tribunal Judge

Chana who had dismissed the appeal of the Appellant against the refusal of his international protection claim. The decision and reasons was promulgated on 24 September 2018.

2. The Appellant is a national of Turkey, born on 5 November 1994, and of Kurdish ethnicity. Neither his nationality nor ethnicity were expressly challenged by the Secretary of State for the Home Department. The Appellant claimed that he was at risk on return from the government as a suspected PKK supporter. After reviewing the evidence, Judge Chana found that the Appellant was not credible and that his claim was fabricated. By way of alternative analysis, even had she accepted his claim, the judge found that (as he had declared himself) he had never been charged with being a PKK member and was not at risk as a failed asylum seeker.
3. Permission to appeal was granted in the Upper Tribunal notwithstanding refusal below because it was considered arguable that the judge had failed to consider all of the evidence which the Appellant had produced, and had not reached clear findings of fact. If so, it might then be arguable that the judge had failed to consider the risk factors identified in IK (Returnees - records - IFA) Turkey CG [2004] UKAIT 00312.
4. Notice under rule 24 had been served by the Respondent, opposing the onwards appeal.

Submissions

5. Ms Panagiotopoulou for the Appellant relied on the Upper Tribunal grounds of onwards appeal and the Upper Tribunal grant of permission to appeal. In summary, counsel mounted an extensive and detailed assault on the First-tier Tribunal determination, contending that the judge had failed to engage with some the key evidence which the Appellant had presented, much of which demanded proper attention, such as the situation of the Appellant's father. It was accepted in the reasons for refusal letter that HDP members could face arrest for suspected involvement with the PKK. It was unclear what the judge had accepted. The judge's views of inconsistency were too selective and the credibility findings were inadequate. The judge had misunderstood the distance which the Appellant had moved to enter hiding with his aunt. The whole

determination was problematic. The decision and reasons was unsafe and should be set aside and the appeal reheard before another judge.

6. Ms Isherwood for the Respondent submitted that none of Counsel's submissions had any real substance. The judge had placed the appeal into the correct context of current country conditions, which were not in serious dispute. The determination had to be read as a whole. The judge had examined the evidence in depth and had reached sustainable findings, providing substantial reasons. The Appellant had had the opportunity to produce documents and the judge had explained what she made of them, applying Tanveer Ahmed * [2002] UKAIT 439 principles. The Appellant had been found not credible for sufficient reasons. There had also been an alternative consideration of the Appellant's story and its consequences. There was no material error of law. The onwards appeal should be dismissed.
7. Ms Panagiotopoulou in reply reiterated her submissions, emphasising that the IK risk factors had been insufficiently considered and that the documents produced had not been taken into account.

No material error of law finding

8. The tribunal reserved its decision, which now follows. The tribunal accepts the submissions of Ms Isherwood and must reject those valiantly made by Ms Panagiotopoulou. In the tribunal's view, the errors asserted to exist in the decision and reasons are illusory. The grant of permission to appeal was a liberal one, because essentially the dispute is over findings of fact with which the Appellant disagrees.
9. The determination was carefully prepared by a very experienced judge who stated specifically that all of the evidence had been considered: see, e.g., [3], [26] and [34] of the determination. That was no mere formula. Judges of the First-tier Tribunal are repeatedly counselled by the higher courts to keep their determination within reasonable bounds, which recommendation this judge applied. The determination must be read as whole, starting with the setting of the scene, the Appellant's admissions in his evidence such as that he had never been charged with being a PKK supporter, had never collected

money for the PKK and did not know where the PKK equipment was: see [17ff] of the determination.

10. There was no requirement for the judge to embark on a minute discussion of each and every point which the Appellant had put forward. The judge focussed on the central elements which if reasonably likely to be true were capable of causing real risk and explained why those claims were implausible, for example, that the Appellant would be recruited as a spy by the authorities, yet having been so recruited was never pursued afterwards: see [38] of the determination. That is an unimpeachable finding with substantial and sound reasons given. It was submitted that the judge erred when finding that the Appellant had not been pursued to his aunt's "nearby" home but of course Turkey is large country and the aunt's province was relatively near. Of equal if not more importance was the obvious fact that she was a relative with links which could have been followed up in a state with emergency powers. This was not a situation of the Appellant disappearing into a labyrinthine and populous metropolis such as Istanbul where some measure of police discretion might be applicable. Again the judge's conclusion is logical and unimpeachable.
11. The judge considered the position of the Appellant's father, which plainly involved examination of the documents put forward relating to him. The judge's statement that the Appellant's father remained in his village (by implication, largely continuing his usual life there) despite being accused of helping the PKK was accurate, as was the finding that the Appellant's evidence on that point was inconsistent and by again implication, exaggerated.
12. Perhaps even more importantly, on a fair and full reading of the determination, it is clear that the judge was constantly testing her primary conclusions, giving anxious scrutiny to the evidence and considering the alternatives: this can be seen in particular at [41], [43], [45] and [48] of the determination, where the judge finds that, even if the Appellant had been detained, which she did not accept, he was released without charge, which was indicative of the interest of the authorities who had the opportunity to make checks on the Appellant, such as the connection with his father or other close relatives. That assessment of the real risk was open to the judge. It is particularly significant given current country conditions, where the Turkish

authorities are accused of acting very heavy handedly, making it less probable that persons perceived to be of continuing interest would be leniently treated.

13. It was submitted that the Appellant (and his advisors) would be unable to know from the determination why his appeal had been dismissed, but the tribunal considers that the judge gave clear and strong reasons why she considered that the claims put forward by the Appellant were not credible. These included the Appellant's humanitarian assistance through Red Crescent (rather than express partisan PKK support) which the authorities would distinguish, the improbability of the authorities' requesting the Appellant to act as a spy, the substantial length of time that the Appellant remained in Turkey undetected and unharmed after claiming that he believed he was in danger from the authorities and his lack of knowledge of HDP despite his claimed support for HDP. The judge also drew attention to inconsistencies in the Appellant's testimony.
14. The judge had demonstrably examined the whole of the evidence with anxious scrutiny, in the current context of country conditions in Turkey. The judge's assessment of risk on return, applying IK on the basis of her credibility findings, was open to her. In the tribunal's view, the submissions advanced on the Appellant's behalf amount to no more than disagreement with the judge's adverse findings of fact, all of which were available to her on the evidence presented, which evidence was plainly sufficiently considered and the consequent findings adequately reasoned. The tribunal finds that there was no material error of law in the decision challenged.

DECISION

The appeal is dismissed_

The making of the previous decision did not involve the making of a material error on a point of law. The decision stands unchanged.

Signed
2019

Dated 7 February

Deputy Upper Tribunal Judge Manuell