



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09751/2018

THE IMMIGRATION ACTS

Heard at Field House
On 28 January 2019

Decision & Reasons Promulgated
On 21 February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

HA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Aslam, Counsel instructed by Linkworth Solicitors
For the Respondent: Ms Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Turkey born on 15 October 1981. On 19 September 2016 he applied for asylum. His application was refused on 28 July 2018. He appealed to the First-tier Tribunal where his appeal was heard by Judge of the First-tier Tribunal Onoufriou. In a decision promulgated on 3 October 2018 the judge dismissed the appeal. The appellant is now appealing against that decision.

Decision of the First-tier Tribunal

2. The appellant's claim, in summary, is that he would be at risk of persecution if returned to Turkey because of his involvement with and connection to the Gülen movement. The appellant claimed, inter alia, that the police visited his family home looking for him.
3. The judge found the appellant's account to be overall credible and accepted that he was involved with the Gülen movement as he claimed.
4. At paragraph 28 the judge summarised the appellant's involvement in the following terms.

"According to the appellant his involvement consisted of initially being supported by the Gülen movement in his education up to 2013 when he graduated university. He then took part in various activities including football events, theatrical events, picnics, attending meetings and providing moderate financial support. At no point did the appellant state that he was involved in any agitation against the Turkish government nor did he state that he was involved in any way in the coup."
5. At paragraph 29 the judge considered the appellant's claim that the police had gone to his home looking for him. Although the rest of the appellant's claim was accepted as credible, this aspect was not. The judge stated:

"I am not satisfied that the police went to his home looking for him. Other than his own evidence there is no evidence to back up this assertion. There is no arrest warrant or other documentation to support his claim. Consequently, I do not consider he would be at risk on return to Turkey, even if the Turkish authorities were interested in his father's political activities."
6. In the decision, the judge referred to, and cited from, an Amnesty International Report on Turkey dated 2017/2018 and a Country Policy and Information Note on the Gülenist movement in Turkey dated February 2018 ("the CPIN report").
7. The judge concluded at paragraph 28 that he did "not think that [the appellant's] involvement with the Gülen movement is of such a high profile that it would bring him to the attention of the authorities".

Grounds of Appeal

8. The grounds of appeal argue that the judge erred by not giving proper consideration to the CPIN report which, according to the grounds, demonstrates that the appellant would face a risk on return to Turkey, given the nature and extent of his activities with the Gülen movement.
9. Permission to appeal was granted by Upper Tribunal Judge Kamara. She observed that, although not argued in the grounds, there is an indication at paragraph 29 of the decision that the sole reason the judge did not accept the appellant's evidence that the police in Turkey had been looking for him was a lack of corroboration.

10. Before me, Mr Aslam argued that the judge had failed to engage with the CPIN report. He highlighted references in the CPIN report to individuals being arrested in many different circumstances merely because of a connection to the Gülen movement. He noted in particular an example of a baker being arrested and compared this to the appellant who had worked in that area.
11. Building on the grant of permission to appeal, Mr Aslam argued that the judge had not explained why the appellant's claim that the authorities were looking for him was rejected when the rest of his account was accepted as credible.
12. Ms Isherwood argued that the grounds amount to no more than a disagreement with conclusions that were open to the judge. She submitted that at its highest the appellant's involvement with the Gülen movement was only modest. She argued that the CPIN report identified a number of groups who are at risk (judges, lawyers, foreign ministry staff, police officers, army officers, soldiers, teachers and academics), one of which applied to the appellant, Ms Isherwood submitted that given the appellant's low level of involvement with the Gülen movement the judge was entitled to conclude that he would not be at risk.
13. Ms Isherwood did not object to the point raised by Judge Kamara in the grant of permission to appeal regarding lack of corroboration being pursued even though it was not within the grounds of appeal. I therefore do not exclude this issue from consideration.

Analysis

14. The decision contains a material error of law.
15. Despite finding that the appellant's overall account was credible - and accepting that he was involved with the Gülen movement as he claimed - the judge rejected the appellant's claim that the police looked for him at his family home. The sole reason given by the judge for rejecting this part of the appellant's account was that there was no documentary evidence to corroborate it. Specifically, the judge stated that the appellant's account was rejected because of the absence of an arrest warrant or other documentation.
16. However, the appellant did not claim that he was arrested or that there was a warrant to arrest him. He only claimed that the police looked for him at his home. That being the case, there was no reason to believe there would be in existence documentation such as an arrest warrant. Requiring the production of an arrest warrant (or other documentary evidence) as corroboration of a claim that the police visited his house, when there was no reason, based on the appellant's account, for any such documents to be in existence, was an error of law.
17. The significance of the error (and the reason it is material) is that even though the appellant did not have a high profile within the Gülen movement (and was not involved with the coup attempt), if the police have been looking for him it would be an important indicator that he was nonetheless of interest to the authorities.

18. I have considered whether I can proceed to remake the decision based on the objective evidence that was before the First-tier Tribunal. Unfortunately, I have reached the view that I cannot. The reason for this is that it will be necessary for a finding to be made on whether the police have looked for the appellant as this is relevant to whether the authorities have an interest in him. To reach a determination on this issue it will be necessary to consider the credibility of the appellant's account. As this will require considerable fact-finding I have decided that the matter should be remitted to the First-tier Tribunal to be heard afresh.

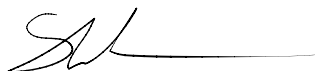
Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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.

Notice of Decision

- A. The decision of the First-tier Tribunal contains a material error of law and is set aside.
- B. The appeal is remitted to the First-tier Tribunal to be heard afresh before a different judge.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 20 February 2019