



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11586/2018

THE IMMIGRATION ACTS

Heard at Manchester CJC
On March 5, 2019

Decision & Reasons Promulgated
On March 8, 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MR DOGA GORKEM BILENGOLU
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Harkhurst, Legal Representative

For the Respondent: Mr Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a Turkish national, entered the United Kingdom with his wife and son on a tourist visa on February 5, 2018. He claimed asylum on political grounds on April 10, 2018. The respondent refused his application on September 18, 2019 under paragraphs 336 and 339M/339F HC 395.
2. The appellant appealed that decision on October 2, 2018 under section 82(1) of the Nationality, Immigration and Asylum Act 2002.
3. His appeal was heard by Judge of the First-tier Tribunal SJ Clarke on October 31, 2018 and in a decision promulgated on November 22, 2018 the Judge dismissed the appellant's appeal on all grounds.

4. Grounds of appeal were lodged on December 6, 2018 in which it was argued that the Judge had materially erred in the assessment of whether the appellant had a significant political profile and whether the appellant would be viewed as a draft evader.
5. Permission to appeal was granted by Judge of the First-tier Tribunal Parkes on January 3, 2019.
6. No anonymity order is made.

SUBMISSIONS

7. Mr Hawkhurst adopted the grounds of appeal and submitted the Judge's decision lacked consistent reasoning or any adequate reasoning. He invited the Tribunal to examine paragraph 14 where the Judge accepted the appellant was kicked and beaten but did not view this as torture. The appellant had been detained on five occasions and he submitted the fact he was part of a demonstration meant he was liable to be detained. On the issue of draft evasion the Judge found he could have paid the exemption fee but the Judge overlooked the fact he had no income and would be unable to do so.
8. Mr Tan opposed the application. Whilst the Judge accepted the appellant had a number of run ins with the authorities he submitted that as he had been released within 24 hours the authorities did not retain any interest in him because if they did then he would not have been released so quickly and in any event not all of his detentions contained a political element. The Judge went on to consider the risk on return from paragraph 25 onwards. If the appellant did not have "risk" profile then there was no reason why the authorities would take any interest in him were he to be returned.
9. With regard to the issue of draft evasion he submitted the Judge dealt with this in paragraphs 15, 17 and 21 of the decision. The Judge found the appellant had previously sourced finances and had access to support in the United Kingdom and given the level of payment was low Mr Tan submitted the Judge's findings were open to him/her.
10. I reserved my decision.

FINDINGS

11. The appellant provided an account of being detained on five separate occasions. None of those detentions led to a period in detention of more than 24 hours. The first two of his detentions were connected because having been arrested in May 2013 he was charged with three criminal offences and required to attend court. It seems he did not attend court and he was later detained in 2014 for none attendance albeit he was released after 24 hours. The third incident concerned a dispute between himself and his landlord and he was questioned and detained for less than 24 hours. The

fourth incident concerned him handing our leaflets and he was released. The final incident related to an argument he had with a policeman.

12. On the face of it two of the incidents had political overtones to them and it is just arguable the incident with the landlord may also have had a political connection due to the complaint lodged by the landlord.
13. The appellant stated he was beaten and kicked by the police on some but not all of these occasions.
14. The first ground of appeal challenged the Judge's finding in paragraph 14. Mr Harkhurst argued that the treatment the appellant received amounted to torture but having read the interview record I am satisfied that the Judge's description of the appellant's claim was correct. The appellant never claimed he was tortured but claimed the police mistreated him on occasions.
15. In his own interview, he accepted he was at best a low-level supporter of HDP. This first ground of appeal is misleading as the grounds gave the impression all his arrests were politically motivated. This was not the case.
16. The Judge recognised the arrests for what they were and the fact the appellant was released within 24 hours of each detention puts his arrests into perspective as does the reasons for his arrest-only two arose from attendance at a demonstration or through political activity.
17. The Judge applied the case law of IK (Returnees-records-IFA) Turkey CG [2004] UKIAT 00312 at paragraphs 24 and 25 and concluded he would not be at risk on return because they had not sought to detain him for any significant period previously. This finding was open to the Judge.
18. The second ground of appeal centred around the fact he had not done his national service. The grounds of appeal referred to a time limit for payment of an exemption fee, but Mr Harkhurst accepted there was no time limit to make the payment.
19. Mr Harkhurst submitted the appellant was at risk of prison because he could not make the payment. The Judge considered that the appellant had been able to raise considerable funds to come to the United Kingdom and currently enjoyed the support of family in the United Kingdom. Mr Tan pointed out the sum to be paid was low (£2,143) and submitted the Judge's approach was correct.
20. The Judge referred to case law and then examined why the appellant had not undertaken his military service. He had not claimed he had any moral aversion to military service in his screening interview although when he attended his substantive interview, he claimed it was wrong to kill someone just because someone told him to kill someone.
21. Whilst the punishment for draft evasion can be prison there is always the option of making the payment and the level of imprisonment can vary.

22. The Judge considered whether a period in prison could amount to persecution or a breach of article 3 ECHR. He referred to two cases in paragraph 18 and 19 in rejecting this claim.
23. There are the following Country Guidance cases which are also on the point and support the Judge's conclusion returning him would not breach the refugee convention or article 3 ECHR.
24. In FA (Military Service-Prison Conditions) Turkey CG [2002] UKIAT 0111 the appellant's claim depended on the conditions that he would suffer as a draft evader if he were sentenced. The Tribunal noted that Article 63.1(a) of the Turkish Military Penal Code imposed a sliding scale for draft evasion ranging from a possible sentence of one month's imprisonment for those who report within seven days to between six months to three years in a house of correction for those arrested after a period of three months. The Tribunal did not doubt that the conditions would not be pleasant. However, the Tribunal was not satisfied that they would be such as to amount to persecution.
25. In GS (Article 3-Persecution-Military Service) Turkey CG [2004] UKIAT 00041 the appellant was a military draft evader. The Tribunal noted the CIPU report which stated that there was a sliding scale of imprisonment for draft evasion. However, a Dutch Ministry of Foreign Affairs Report indicated that military judges in general impose minimum sentences. The sentences for desertion are higher than those for evasion and registration/examination or enlistment, but as a general rule, normal prison sentences of less than one year can be commuted into a fine. The appeal was dismissed.
26. Given the above cases, the fact he was entitled to an exemption at the outset and the fact he could pay the exemption fee I find the Judge was entitled to reach the conclusion he did. There is no error in law on this issue.

Notice of Decision

There is no error in law. I uphold the original decision.

Signed

Date 05/03/2019



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I do not make a fee award because I have dismissed the appeal.

Signed

Date 05/03/2019

A handwritten signature in black ink, appearing to read "SP Alis". The signature is written in a cursive style with a long horizontal stroke at the bottom.

Deputy Upper Tribunal Judge Alis