



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/00044/2014

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 3<sup>rd</sup> March 2015

Determination Promulgated  
On 23<sup>rd</sup> April 2015

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MEHMET DARI  
(ANONYMITY DIRECTION NOT MADE)

Respondent

**Representation:**

For the Appellant: Mrs R Pettersen, Home Office Presenting Officer  
For the Respondent: Mr T Hussain, Counsel, instructed by Migrant Law Partnership

**DECISION AND REASONS**

1. This is the Secretary of State's appeal against the decision of Judge Brown made following a hearing at Taylor House on 21 August 2014.

## **Background**

2. The claimant is a citizen of Turkey born on 1<sup>st</sup> February 1995. He said that he entered the UK on 26 January 2011 and he claimed asylum on 7 February 2011. He was refused on 19<sup>th</sup> April 2011 but he was granted discretionary leave until the age of 17½.
3. During the period of his leave the claimant applied for further leave to remain on asylum grounds. The application was refused on 5<sup>th</sup> December 2013. His appeal was initially heard by Judge Andonian on 3<sup>rd</sup> February 2014 and he allowed the appeal. The Secretary of State appealed to the Upper Tribunal and, on 24<sup>th</sup> April 2014, Upper Tribunal Judge Perkins set aside the First-tier Tribunal's determination on the grounds that inadequate reasons had been given for the decision.
4. The matter then came before Judge Brown and he again allowed the appeal.
5. The claimant says that he fears a return to Turkey on the grounds of persecution because of his political opinion. He is a Turkish national of Kurdish ethnicity. His father and other Kurdish villagers helped the PKK and everyone in the village was suspected of supporting them. The PKK used to come to his village during the night and sometimes he saw his father giving them food and clothes. His father was arrested and detained on many occasions. Three or four months before he left, in September or October 2010, his father disappeared.
6. The claimant was personally detained by the authorities on three occasions. The first detention was in January 2009 when he was accused of being involved with the PKK. A week beforehand there had been a meeting in the village organised by the DTP. The claimant took part in the meeting and members of the DTP Youth Branch came to talk to them. A week later the police raided his house and arrested him. His details were recorded from his ID card and he was interrogated. He admitted to taking part in the meeting and was asked to give the names of the attendees. He was threatened and ill-treated before being released on the following morning and told that he had to inform the police if there were any PKK activities in the village.
7. The second detention took place on 25<sup>th</sup> February 2010 and the claimant was arrested with his father and taken to Sakcoguzu police station. He was again interrogated about the PKK and badly treated before being released. He went to a clinic and obtained medical treatment for bruising and cuts although he did not have any serious injuries.
8. The third detention took place on 25<sup>th</sup> December 2010 when he was detained at Gaziantep where there was a BDP Youth meeting which was raided by the police. The claimant was again subjected to aggressive questioning and badly treated and again asked to provide names. On the second day he was released on the agreement that he was attended the BDP regularly and report back to the police. He understood that a bribe had been paid. Ten days later two police men came to his house and said that they were very proud that he was to work with them.

9. His uncle was very worried and took him to his paternal aunt who arranged for him to leave the country.
10. The judge said that the claimant's story had been relatively consistent and he accepted that he had been vague in his answers to questions regarding his political knowledge because of his young age. A witness was able to confirm the Appellant's attendance at various meetings and his subsequent arrest and detention. The problems experienced by the Appellant were consistent with the background information.
11. He observed that there was confusion in the oral evidence as to whether a warrant had been issued for his arrest and there was no clear answer as to the truth of the statement. He said that it was possible that his name and his father's name would be known as PKK supporters and he would have difficulty re-entering Turkey. On that basis he allowed the appeal.

### **The Grounds of Application**

12. The Secretary of State sought permission to appeal on the grounds that the judge had not given adequate reasons for his decision. He had done little more than place reliance on the lower standard of proof and failed to engage with the discrepancies in the claimant's evidence. Neither had he indicated whether the supporting witness was credible and, if so, how his evidence overcame the concerns that the judge had regarding the arrest warrant. Nor had he addressed the issues relating to internal flight raised in the refusal letter.
13. Permission to appeal was granted by Judge Saffer on 16<sup>th</sup> September 2014 for the reasons stated in the grounds.

### **Submissions**

14. Mrs Pettersen relied on her grounds and submitted that the judge had simply failed to give proper reasons as to why he had found the claimant to be truthful, had not engaged with the refusal letter, particularly with respect to internal flight, and had not properly applied the standard of proof.
15. Mr Hussain submitted that the Secretary of State was simply disagreeing with the decision. The judge had set out the burden and standard of proof in the determination and if he had accepted that the claimant had been badly treated by the authorities the question of the warrant was immaterial. It was open to the judge to find that the claimant's profile would put him at risk.

### **Consideration of whether there is a material error of law**

16. This determination is not an adequate resolution of the issues before the Immigration Judge.
17. Whilst he was fully entitled to conclude that the claimant's evidence had been relatively consistent, both internally and with the country information, he was

obliged to engage with the very detailed reasons given by the Secretary of State in the refusal letter. Moreover the judge clearly had concerns about discrepancies in the oral evidence in relation to the warrant and was obliged to resolve them. The issue of the warrant was relevant so far as the judge's consideration of the credibility of the claim as a whole. In particular, the issue of the arrest warrant has an impact on the practicability of internal relocation, which was a live issue. The Secretary of State considered that the claimant did not have a political profile which would give rise to a real risk on return to a different area in reliance on IK (Returnees records IFA) Turkey CG [2004] UKIAT 00312; the judge simply did not engage with the Secretary of State's position which is that the claimant could reasonably live elsewhere.

18. The decision of Judge Brown is set aside and must be re-made.

### **The Resumed Hearing**

19. I heard oral evidence from Mehmet Dari and from his friend, Mehmet Yilmaz who both confirmed that the contents of their witness statements were true and correct.
20. The Appellant was asked about his detentions, the first in January 2009, following his attendance at a meeting in the village organised by the DTP, and the second in February 2010. In his statement he said that he and his father were handcuffed and taken to Sakcoguzu Gendarme Station where they were fingerprinted and put in separate cells. He confirmed in his oral evidence that his fingerprints were taken and that his statement was correct. It was put to him that on arrival he had been asked whether he had ever been fingerprinted in the UK or any other country before and, if yes, where, when and why. He replied "only when I claimed asylum on 7.2.2011 and no".
21. His explanation for the discrepancy was that he had presumed that the interviewing officer was meaning the UK. The question was clear but I take into account the fact that the Appellant was a minor in February 2011 and I therefore place less weight upon inconsistencies in the evidence when comparing an interview which was conducted when the Appellant was a child than I would have done if he had been an adult at all material times.
22. In his interview the Appellant said that his father was missing and he had last seen him in the October before the interview, which would have been in 2010. When asked where he was now the Appellant said that he was in hiding and he came in the middle of the night every couple of months. He was asked why he had not mentioned in his statement that his father was in hiding and he said that he thought that he had told his solicitor that. I bear in mind that I should be cautious about holding omissions in his statement against the Appellant but on the other hand it is extremely detailed, running to twelve pages and the fact that the Appellant made no mention of his father being in hiding during the course of some 42 paragraphs causes some concern.
23. In his interview the Appellant said that he signed something before he was released from detention on the second occasion and told that if he did not sign he and his

family would be killed. In his statement of 28<sup>th</sup> January 2014 he specifically said that his answers to those questions were incorrect and the authorities did not say that he would be killed. When the discrepancy was put to him in oral evidence he said that he was not certain but he thought that is what it said and if he did not sign he would be killed. He could not read it properly. Both the second statement and the oral evidence today were taken when the Appellant was over the age of 18 and there is therefore no basis for any allowance to be made for the discrepancy on grounds of age.

24. The answers in relation to his ID card are also contradictory. The Appellant was asked whether he had an ID card and he said that he did and it was obtained by the family when he was born. Later in cross-examination he said that the NUFUS card which he gave to the Immigration Officer on arrival, dated 15<sup>th</sup> December 2010, was his first card and he got it a long time ago, about one or three years before he came to the UK. It was put to him that the date on the card was only two months before he arrived and he said that he thought it was longer. Mrs Pettersen asked him, if this was his first card, what ID did the gendarmes check in 2010? The Appellant modified his evidence and said that he used to have one but he lost it. He had said that this was his first card because it was the first time he had gone with his uncle to get the card and before that his family had got it.
25. At the interview the Appellant said that he had only talked to his family, namely his mother, once since he had been in the UK. In oral evidence he said that he rang her every couple of months. He was told by her that the police kept coming and asking for him and asking whether he was on the mountains fighting against the Turkish Republic. His mother had told them that he was in the UK but they thought that she was lying. They had been asking her for his whereabouts for the past four years and because they could not get hold of him they put pressure on his younger brother. When his brother refused to co-operate they beat him up. He had been taken away and interrogated and the police had threatened to kill him. Once when he was in a coffee shop, speaking Kurdish, people poured hot water on his hand. He came to the UK some five months ago and claimed asylum because he was afraid.
26. The Appellant confirmed that the same solicitors who were acting for him were representing his brother. I gave Mr Hussain an opportunity to contact his solicitors to see if they could provide any further details and in particular explain why there was nothing from the younger brother before the Tribunal to confirm that the Appellant's story was true. Mr Hussain was unable to contact them during the 25 minute adjournment.
27. The Appellant's younger brother is of course still a minor but on the other hand there is no reason at all why a statement could not have been taken from him since he is in the best possible position to confirm the truth or otherwise of the Appellant's story of persistent interest in him since he left Turkey.
28. The Appellant was asked whether he was ever charged with an offence in Turkey. He said that he had not been and had never been to court and had only been

detained. He was then asked why there would therefore be any record of him if there were no outstanding charges. He said it was because they kept coming and asking for him.

29. The Appellant's case therefore rests upon the credibility of his claim that for four years after his departure from the UK the police maintained a significant interest in him to the extent of beating up his younger brother in order to get information about the Appellant's whereabouts.
30. The Appellant's friend, Mehmet Yilmaz has been granted refugee status and has known the Appellant since childhood. He confirmed that the Appellant attended some meetings although it was quite a long time ago and he did not remember any dates or names. He recalled that he was detained on at least two occasions and after he was detained they talked about what had happened because he had suffered similarly. He also said that at one point he was forced to be an agent for the authorities because the Appellant mentioned it to him.
31. The Appellant accepted that he had not taken part in any political activities in the UK and he said that his friend was also not involved and they very seldom spoke about politics together. Mehmet Yilmaz agreed that now and again he talked about things with people but he did not attend specific places.
32. Mr Hussain relied on his skeleton argument which, in essence is that the Appellant's story was consistent with the objective material and that he falls within a risk category set out in the country guidance case of IK (Returnees - records - IFA) Turkey CG [2004] UKIAT 00312 as he refused to become an informer.

### **Findings and Conclusions**

33. I accept that discrepancies and omissions in the Appellant's original interview cannot be used as the basis upon which to impugn the veracity of his evidence as a whole. He was only 15 years old at the time. I also accept that his family were supporters of Kurdish parties in their local area. It is not inherently implausible.
34. Whilst some of the discrepancies, for example in relation to fingerprinting at the interview and the omission of the claim that his father was in hiding in his SEF statement could be explained by his minority, others cannot. The Appellant had attained the age of majority by the time of the second statement and there is a clear difference between his repetition of the claim at the interview that the authorities wrote down that he would be killed and his present claim that they did not. The discrepancy in the oral evidence in relation to the ID card also remains unexplained. Moreover, it is inherently implausible that the Appellant would have almost no contact with his mother after he had first arrived in the UK but now says that he speaks to her every couple of months.
35. Most significantly, the Appellant's account of the police visiting his home on a regular basis and ill-treating his younger brother in order to get information about him is wholly fanciful. On his own account he was detained very briefly on three

occasions between 2009 and 2010 when he was a young boy. He is not someone who has shown any interest in Kurdish politics since he has been in the UK. There would be absolutely no reason whatsoever for the Turkish police to devote so much time and resources in pursuing someone whom they did not even charge with an offence before he left.

36. I accept that Mehmet Yilmaz is a friend of the Appellant but not that his evidence is reliable. There was a discrepancy in their evidence, for example, about when the young men were last at school together. The Appellant first of all said that it was in 2007 or 2008 but agreed that it was possible that his statement was correct when he said 2010. Mehmet Yilmaz was similarly vague about dates. He said that he himself finished school in 2010 and the Appellant was a year above him. He then said that they were last at school together in 2007 but when challenged said it could have been 2008 or 2009.
37. Moreover I do not believe that, as claimed, the friends met by chance in Scunthorpe when the Appellant happened to see Mr Yilmaz's brother in a Kurdish shop. Mr Yilmaz's knowledge of the Appellant's activities in the statement is spectacularly vague and in my view intentionally so. The fact that he has been granted status is not a basis for the Appellant to be recognised as a refugee since each case is dealt with on its own facts.
38. I conclude that there is no reasonable degree of likelihood that there is any truth at all in the Appellant's claims to have been detained and that the decision to come to the UK was a part of the pattern of family migration from Turkey to the north-east of England, a pattern which has been continued with the arrival of the Appellant's younger brother.
39. The Appellant is a young, healthy male. There is no reason why, if he decided not to return to the south-east of Turkey, he could not re-establish himself here. According to the Operational Guidance Note on Turkey in the Appellant's bundle the computerised GBT system has a defined and limited ambit comprising only outstanding arrest warrants, previous arrests, restrictions on travel abroad, possible draft evasion, refusal to perform military service and tax arrears. Arrests as defined in the GBTS require some court intervention and must be distinguished from detentions by the security forces followed by release without charge.
40. The Appellant's case at its highest, so far as what happened to him in Turkey is concerned, is that of detention and release. Not only does the OGN support the conclusion that the Appellant would not be of any interest to the authorities on arrival but it also undermines the claim of continued interest in him by the police over the intervening four years since his departure from Turkey.
41. Mr Hussain confirmed that the only ground being pursued in this appeal was the asylum ground and for reasons detailed above I conclude that the Appellant has not made out his case.

**Notice of Decision**

**42.** The original judge erred in law and his decision has been set aside. The appeal is dismissed.

No anonymity direction is made.

Signed

Date

Upper Tribunal Judge Taylor