



IAC-FH-AR-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/03461/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 01 September 2015**

**Decision & Reasons Promulgated
On 24 September 2015**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

**BD
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Collins, counsel, instructed by Migrant Law Partnership

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of Judge of the First-tier Tribunal Roopnarine-Davies who, in a decision dated 03 November 2014, but promulgated on 03 December 2014, dismissed the appellant's appeal against the Respondent's decision of 09 May 2014 to refuse her asylum claim and to remove her from the UK.

Background and summary basis of the Appellant's asylum claim

2. The appellant is a national of Turkey, date of birth 15 October 1992. She entered the UK clandestinely on 15 December 2013 and made an asylum claim on 07 April 2014. She claimed to fear the Turkish authorities on the basis of her support for the Peace & Democratic Party (BDP) and the authorities imputed belief that she was also a supporter of the PKK. She claimed she and her sisters were first arrested at their home by the Turkish authorities on 04 August 2013. She was detained for 2 nights, kicked and beaten. She was arrested a 2nd time on 03 October 2013, along with about 50 others, following her attendance at a BDP organised rally. She was detained for 2 days, raped and tortured. She was released and told to report weekly to the police station. She was arrested when she went to report on 04 November 2013. She was suspected of having knowledge of an armed clash that had occurred a couple of days previously. She was detained for 2 days, raped and tortured. The police took her fingerprints and she was released because they did not have enough evidence against her. Fearing further ill-treatment her father arranged for her to leave the country. The appellant maintained that the authorities continued to manifest an adverse interest in her, that her father had been detained before and after her departure, and that an arrest warrant had been issued against her.

The Reasons For Refusal Letter

3. The Respondent accepted the Appellant and her family were low-level supporters of the BDP. The Respondent did not however find the Appellant's account credible. The Respondent rejected her claim to have been arrested and seriously ill-treated on three occasions, and found that the Appellant was of any past or present adverse interest to the authorities. As a result the Respondent was not satisfied the Appellant faced any risk of ill-treatment on return.

The hearing before the First-tier Tribunal and its decision

4. Having witnessed the Appellant undergo examination-in-chief and cross-examination the Judge did not find her credible. The Judge rejected the Appellant's account of her three periods of arrest and detention. The Judge claimed the Appellant's account was internally inconsistent and inconsistent with the background information before her. The Judge found it implausible that, if the Appellant was so passionate about the Kurdish cause, she only started attending meetings and distributing leaflets when she was 20 years old. This was contrasted with a cousin of the Appellant whose account was found credible by another immigration Judge and who started his political involvement when he was 14 years old. The Judge found the Appellant offered scant details of her father's arrests, nor was it credible that the father's arrests would not have required court intervention. The Judge found it incredible that the

Appellant's mother would not know where her husband was. The Judge did not find it credible that the Appellant would attend a BDP rally after being warned by the authorities to not participate in anti-state events.

The Grounds of Appeal to the Upper Tribunal

5. The Grounds contend that the Judge failed to give adequate reasons for some of her adverse credibility findings, such as her finding that the Appellant's evidence in her interview was rehearsed. Issue is also taken with a number of the Judge's findings premised on the plausibility of aspects of the Appellant's account. It was further submitted that the Judge took account of information that was not before the Tribunal.

The error of law hearing

6. Mr Collins, representing the Appellant, relied on and repeated the Grounds as drafted. The thrust of his challenge related to the inadequacy of the Judge's reasoning. In addition to the points raised in the Grounds Mr Collins submitted, with respect to paragraph 17 of the determination, that there was no basis for Judge's conclusion that the family's relocation from the village in which they lived, as a result of frequent raids by the Gendarme, was inconsistent with their support for the BDP. The Judge's finding at paragraph 18 that the arrests of the Appellant's father would, according to the background material, have required court intervention, was not in fact supported by any such material.
7. Mr Clarke, on behalf of the Respondent, submitted that some of the points now raised by Mr Collins had not been specified in the Grounds. It was agreed that further written submissions would be provided by both representatives following the close of the hearing. Mr Clarke submitted that, despite the unfortunate use of the word 'pithy' at paragraph 12 of the determination and the somewhat 'cryptic' nature of paragraph 19, the Judge provided voluminous reasons for rejecting the Appellant's account. Mr Clarke went through the paragraphs of the determination and invited me to find that the Judge was entitled to her findings for the reasons given, and that those reasons were legally adequate.
8. I reserved my decision, giving both parties an opportunity to provide further written submissions. In the event I received further written submissions from Mr Collins. As Mr Collins relied on the COI report, Mr Clarke indicated by email that he was content to make no further written submissions of his own.

Discussion

9. The Judge stated, at paragraph 12, that some of the Appellant's responses in her interview, particularly about Turkey and the BDP, "... gave the impression that they had been rehearsed and undermined the

claim that she was only a 'house-girl' who left secondary school after 3 years because of victimisation by Turkish school teachers and stayed at home to help her mother at home." The Judge has failed to explain what and why certain aspects of the Appellant's responses gave rise to that impression, and the Judge failed to identify what those responses were. The Judge then stated, also in paragraph 12, "The precise recall of dates and times of the arrest coupled with what in substance is a relatively pithy claim underscored the impression." The Judge has not adequately explained why the Appellant's ability to accurately recall dates of arrest undermined her account. In holding an adverse inference in these circumstances the Judge's reasoning has been deficient.

10. At paragraph 15 the Judge drew an adverse inference against the Appellant because, although she was able to correctly answer general questions about the BDP in her asylum interview, she 'volunteered little' that showed more than a general knowledge of the party. Given that an asylum interview is very much a reactive exercise, the applicant responding to specific questions put by the interviewer, there is in practice little scope for one to volunteer information over and above the specific question asked. In these circumstances it was inappropriate for the Judge to have held against the Appellant the fact that she 'volunteered little' when questioned during her asylum interview.
11. Also at paragraph 15 the noted that, until her second arrest the Appellant claimed to have "... attended approximately 5-6 meetings at the BDP building in Gazianatep (approx. 54km away from her village according to information on the Internet." Although it is not altogether clear it seems, given the context in which it appears, that the Judge may have regarded this information as detracting from the Appellant's credibility. There was however no downloaded information before the Judge relating to this distance, and Mr Clarke could not identify any evidence before the Judge that contained this information. This suggests the Judge engaged in her own research without informing the parties or giving them an opportunity to comment on the accuracy or relevance of that research. It is a trite proposition of law that a Judge should not conduct their own research without informing the parties and giving them an opportunity to make any representations (**EG (post-hearing internet research) Nigeria [2008] UKAIT 00015**). This constitutes an error of law. I additionally note that, at paragraph 24, the Judge refers to information that is 'in the public domain' to the effect that the Turkish authorities had agreed to give military and other assistance to Kurds in their fight against ISIS. The Judge has not however indicated the source of her information, further giving the impression that she may have conducted her own research or relied on information that was not provided by the parties.
12. Still at paragraph 15 the Judge appears to adopt the Respondent's position that the Appellant's claim to have been detained as a result of her ethnicity is inconsistent with her claim that the authorities believed she was connected with the PKK. The Appellant's account however does

not indicate that these were mutually exclusive alternatives. It is quite possible for the authorities to both believe, as a result of her and her family's activities, that the Appellant was associated in some way with the PKK, and that a further aggravating reason for the adverse interest in her was her Kurdish ethnicity.

13. In paragraph 17 the Judge concluded that the earlier relocation by the Appellant's family from the village in which they used to live, as a result of frequent raids by the Gendarme, was inconsistent with their support for the BDP as they would court attention by participating in BDP events. There is however a clear distinction between supporting a legal political party on the one hand and, on the other, living in a small village that was frequently raided by the Gendarme and where the inhabitants were frequently accused of helping the PKK. In these circumstances it is entirely understandable why a family who are BDP supporters would wish to relocate. I am therefore satisfied that there was no sufficient basis for the Judge's inconsistency finding. I additionally note that, to the extent that the Judge's conclusion may have impliedly suggested the family were not supporters of the BDP, this was inconsistent with the Respondent's own acceptance in the Reasons For Refusal Letter (paragraph 32) that the family were BDP supporters.
14. At paragraph 18 the Judge was not satisfied that the alleged arrests of the Appellant's father without the requirement for court intervention was not consistent with the background evidence. The Judge did not identify what particular background evidence she had in mind. The August 2010 COI report, at 8.18, noted that the Turkish government did not at times observe the prohibition on arbitrary arrest and detention and that police routinely detained demonstrators for a few hours and several hundred members of the BDP on various occasions. In light of this background evidence, and in the absence of any particularised background evidence to support the Judge's conclusion relating to the requirement for court intervention, I am not satisfied she was entitled to her conclusion for the reasons proffered.
15. At paragraph 19 the Judge claims it is 'simply not credible' that the Appellant's mother would not know her husband's whereabouts following his last release from custody given that he was planning on leaving the country. The Judge does not offer any explanation to support this finding, or for her subsequent assertion that there were 'substantial grounds for believing that he has left the country and will seek to claim asylum.'
16. At paragraph 23 the Judge held against the Appellant her failure to request and obtain a copy of the arrest warrant issued against her, and the absence of evidence that warrants had been issued in respect of her siblings. The COI report of August 2010 (the most recently issued), at 11.04 and 11.05, indicates the considerable difficulty in obtaining arrest warrants in Turkey. The Judge's failure to take account of this directly

relevant background material renders unsafe this particular adverse credibility finding.

17. Having carefully considered the determination as a whole, I am satisfied, for the reasons that I have already given, that the determination is unsafe and that it must be re-made.
18. The appeal will be remitted for fresh consideration, all issues open, before a Judge other than Judge Roopnarine-Davies.

Notice of Decision and Directions

The First-tier Tribunal Judge did make a material error of law.

The appeal is remitted back to the First-tier Tribunal pursuant to section 12 of the Tribunals, Courts and Enforcement Act 2007 for reconsideration, to be decided afresh, all issues open.



Signed

24 September 2015

Date

Upper Tribunal Judge Blum