



IAC-AH-VP-V1

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

Appeal Number: AA/02761/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 15th February 2016**

**Decision & Reasons
Promulgated
On 28th April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

[N K]

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J H Thruppingham (Counsel)
For the Respondent: Ms Brockleby-Weller (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge M R Oliver, promulgated on 24th July 2015, following a hearing at Hatton Cross on 19th June 2015. In the determination, the judge dismissed the appeal of the appellant, whereby the appellant applied for, and was granted,

permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Grant of Permission

2. On 23rd October 2015, permission to appeal was granted by the Upper Tribunal in this case on two specific matters. First, the judge took the appellant's case "at its highest" but made no findings as to the credibility of her account to be involved with the Kurdish parties, the BDP and HDP in Turkey. Had the judge done so, it was clear that the relevant CG case law and up-to-date evidence submitted at the hearing, assists the appellant's claim. It said, the judge simply referred to the "political landscape" which had "dramatically changed" since the events complained of in 2013, and the assertion that the judge makes was not supported by any reasoning based upon the evidence submitted before the Tribunal. Second, with respect to Article 8 of the ECHR, the judge wrongly failed to find that the appellant's husband, despite being a refugee from Turkey, would not have been able to return with the appellant to Turkey were she to have to go there.

Submissions

3. At the hearing before me on 15th February 2016, Mr Thrumpingham made the following submissions.
4. First, the judge observed how:

"Dr Alison Mason met the appellant for six hours spread over three meetings. She took a detailed history of the appellant's history which accords with the consistent story from the screening interview, asylum interview, witness statement and oral evidence" (paragraph 30).
5. Mr Thrumpingham submitted that this showed that the appellant's account was consistent at every level of the proceedings.
6. Second, the judge observed that the appellant's evidence did not demonstrate "an inconsistency" (paragraph 32).
7. However, as against these positive findings, which expressly related to an asylum claim, the judge then took into account the way in which the appellant's son's British passport was obtained and went on to observe that, "If the appellant was a party to this misrepresentation it must have considerable bearing on her credibility generally" (paragraph 32). This did not follow at all because the application for a passport is entirely different, especially when it is in connection with the application for the appellant's child, to the appellant's asylum, which had been determined by the judge to be entirely consistent (see paragraph 30).
8. Third, the judge does not in any event determine what the nationality of the appellant's child is. Had it been determined that the child was indeed

a British citizen as alleged then this should have gone directly to what the Supreme Court held in **ZH (Tanzania)**, namely, that the significance of nationality, although not a trump card, it cannot be underestimated.

9. Fourth, the respondent had invited the Tribunal to depart from existing country guidance (see Appendix A where the respondent was stating that country guidance should not be followed because the appellant's case was her membership of the HDP but an HDP member had been elected to parliament, which presumably demonstrated that there was a wider degree of acceptance of HDP members). However, the article that is relied upon, which is an article from the *Guardian* newspaper, and which appears at Appendix A expressly shows the prime minister of Turkey referring to the leader of the HDP as an "infidel" and as bad as a member of the "PKK". Therefore, it simply did not stand to reason that, on the basis of what the respondent proposed, that departure from the country guidance case was a sensible thing to do, because the evidence relied upon by the respondent showed quite the opposite, with HDP leaders being referred to as "infidel" and "as bad as the PKK".
10. Finally, the judge goes on to deal with the appellant's husband. Curiously the judge states that, "I have been provided with no information indicating the appellant's husband cannot return with her to pursue their family life in Turkey, save for the assertion that he has been granted refugee status" (paragraph 36). However, the grant of refugee status in itself is proof that persecution awaits a person who, by virtue of having a "well-founded fear of persecution" has been granted sanctuary in this country.
11. For her part, Ms Brockleby-Weller submitted that she would have to accept that there were difficulties with the determination. However, she would add that the child is not the child of the husband, who has been granted refugee asylum status, but is the natural child of the appellant with another person. She would also have to say that there may be difficulties with the appellant having to get travel documents to return to Turkey in her circumstances. What ill-treatment she had suffered was purely historical and it may be that the judge was correct in the way that he had made findings of fact.
12. In reply, Mr Thrumpingham submitted that there was no consideration of what the appellant could do if she returned back to Turkey. She was bound to attract adverse attention and risk ill-treatment.

Error of Law

13. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.
14. First, the appellant has, on the judge's own account, provided an entirely consistent story. It has been consistent at every level of the asylum process (see paragraph 30).

15. Second, the judge sets out to impugn that credibility by reference to the appellant's son having procured an alleged British passport. However, the judge makes no finding as to whether a British passport was actually procured. In any event, its relevance to the asylum claim is difficult to see.
16. Third, the judge avoids having to make a finding on crucial aspects of the case. He observes that, "Because of the consistency and detail of the appellant's account of her treatment I do not reject her story but instead make no finding ..." (paragraph 33). It is difficult to make sense of this statement.
17. Finally, the conclusion that the appellant can return to Turkey, with her husband accompanying her, in circumstances where the husband has been given full refugee asylum status, is plainly incorrect given that this conclusion is arrived at by the judge on the basis that, "I have been provided with no information indicating that the appellant's husband cannot return with her to pursue their family life in Turkey ..." (paragraph 36).

Decision

The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This matter is remitted back to the First-tier Tribunal, to be heard by a judge other than Judge M A Oliver under Practice Statement 7.2(b) because the nature or extent of any judicial fact-finding which is necessary in order for the decision in the appeal to be remade is such that, having regard to the overriding objective and Rule 2, it is appropriate to remit the case to the First-tier Tribunal. All positive findings in favour of the appellant must stand intact. I give directions that the appellant furnish further evidence in relation to what passport has been procured by the appellant's son and in what manner insofar as there is an allegation that misrepresentation was used and that the appellant was complicit in it. The matter is to be set down for a two hour hearing before a First-tier Tribunal Judge.

No anonymity direction is mad

Signed

Date

Deputy Upper Tribunal Judge Juss

27th April 2016