



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

Appeal Number: PA/04146/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18 October 2018**

**Decision and Reasons  
Promulgated  
On 27 November 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY**

**Between**

**MS T O  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Lagunyo, Counsel for Howe & Co Solicitors, Brentford  
For the Respondent: Mr Tarlow, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Turkey born on 10 September 1986. She appealed the respondent's decision of 15 March 2018 refusing her asylum and humanitarian protection claims. Her appeal was heard by Judge of the First-Tier Tribunal Norris on 1 and 14 May 2018 and dismissed in a decision promulgated on 23 May 2018.

2. An application for permission to appeal was lodged and permission was granted by Upper Tribunal Judge Chalkley on 7 August 2018. The permission states that there may be some merit in the first ground but the arguments are not limited. The first ground is that the Judge failed to adequately consider risk on return in light of the appellant's involvement in the Gulen Movement. The Judge accepted that the appellant was an active member of the Gulen Movement in Turkey. This was also accepted by the respondent. The Judge however found that the appellant's father and brother had not been detained and although the appellant's name is on a list of persons identified as Gulenist supporters, he found that she did not face a real risk of persecution. The grounds state that the Judge failed to properly consider that in May 2016 the Turkish government declared the Gulenist Movement to be a terrorist organisation and the Judge did not properly consider the connection between the appellant being mentioned on this list and being identified on return. The Judge found that in the absence of an arrest warrant the appellant was not wanted by the authorities. The Permission states that the Judge also erred in his assessment of the court documents and failed to consider that any period in detention carries a risk of torture or ill treatment in Turkey.
3. The second ground is that the Judge failed to adequately consider the corroborative evidence supplied by the appellant. He failed to attach any evidential value to the evidence of [YK]. The grounds state that the Judge misconstrued the appellant's evidence and rejected central parts of her claim due to misdirection and the Judge's rejection of her brother's detention was inadequately reasoned. The grounds state that the Judge's overall findings on credibility are flawed when the supporting evidence is considered on the lower standard of proof.
4. There is a Rule 24 response on file. It states that the First-Tier Tribunal Judge was entitled to view the appellant's documentary evidence in light of Tanveer Ahmed and the absence of evidence reasonably available in light of ***TK (Burundi)***. The response states that the First-Tier Tribunal Judge gave cogent reasons at paragraphs 7.6 - 7.8 and 7.12 - 7.18 for concluding that the appellant had failed to discharge the burden of proof and for finding that she was not at risk on return. The response goes on to state that the appellant failed to establish that merely being a Gulenist is determinative of risk on return, noting the appellant's own evidence that her brother was a Gulenist and had been detained by the authorities but was released on bail and the family expect his name to be cleared. The response goes on to state that the First-Tier Tribunal Judge was entitled to conclude that the alleged detention of her father and brother did not take place. The Judge referred to inconsistencies around her father's detention and the appellant's failure to provide reasonably available corroborative evidence of her brother's detention/bail/ court proceedings.

### **The Hearing**

5. Counsel for the appellant submitted that the Judge did not engage with the appellant's risk on return as she is a specific Gulenist and this is accepted.

She submitted that Gulenist members are detained and tortured and in the COI report Gulenist members have been accused of the coup in Turkey.

6. She submitted that the Judge states that membership of the Gulenist Movement is not enough for real risk but this is an appellant who was studying in the United Kingdom and had a scholarship from the Turkish government which was taken away from her. She submitted that the appellant is awaiting the outcome of her appeal to the court about this.
7. Counsel submitted that there is nothing in the decision about the appellant being at risk on return but she must be at risk on return, because she is on a government list, along with a number of other students whose scholarships have been withdrawn. She submitted that the appellant's mother and father were detained but the Judge does not accept this and finds that the appellant will not be at risk on return. The judge states that this is because there is no arrest warrant. She submitted that what the Judge states is not sufficient and the Judge has not dealt with the country evidence which states that 100,000 people and more have been detained for the same reasons.
8. Counsel made reference to the witness who attended the hearing to support the appellant and submitted that he is on the same list as the appellant and was granted asylum after being interviewed and explaining his risk on return. Another friend returned and was detained for 14 weeks and she submitted that even if the Judge does not believe that the appellant's father and brother were detained, proper findings have not been made on this appellant's risk on return and this must be an error of law.
9. The Presenting Officer made his submissions, submitting that the grounds are merely a disagreement with the findings made by the Judge. I was referred to paragraphs 7.6 to 7.8 of the decision in which the Judge assesses the appellant's individual circumstances and accepts that the appellant was involved in the Gulen Movement while she was in Turkey. The Judge states that there is no evidence that she has continued that involvement in the United Kingdom with the exception of two seminars for which the appellant did not produce any evidence and the Judge notes that there is no evidence of her being high profile. The Judge refers to the appellant's ByLock account and her bank account with Bank Asya and the appellant stating that the bank account has been frozen. Again she has produced no evidence of her bank account or it being frozen and no evidence of her ByLock account. The Presenting Officer submitted that the Judge has given proper reasons for his decision. It is correct that corroboration is not required but the Judge points out that the evidence produced is not satisfactory. This finding is explained at paragraph 7.7 of the decision. There is nothing before the Judge to connect the appellant to the people named in the court documents and there is nothing about the appellant's father's or brother's detention and nothing to identify any of them. The Judge states that as the court documents were sent to the

appellant via WhatsApp they could have sent the identity documents in the same way. The Presenting Officer submitted that the Judge was entitled to the findings of fact he made and gives proper reasons for these findings in the decision.

10. I was then referred to paragraphs 5.9, 5.10 and 5.25 of the decision. Reference is made to the appellant's brother being detained and released on bail and the statement that he is expected to be cleared. The Presenting Officer submitted that the decision is well written and reasoned and more than sufficient reasons have been given for the Judge's findings to be upheld. He submitted that there is no material error of law in the Judge's decision and that it should stand.
11. Counsel made further submissions referring to the bank and ByLock accounts referred to at 7.6 of the decision and she submitted that the Judge has made no finding as to whether the appellant did have a ByLock account or not. I was referred to pages 7 and 13 of the objective evidence which states that those with ByLock accounts will have difficulties on return and could be detained. There was no evidence of the Bylock account before the Judge apart from the appellant's oral evidence. He refers to this and clearly did not believe she had one.
12. Counsel submitted that the Judge did not engage with risk to the appellant on return, he just states that she has not been subject to any surveillance or monitoring. The Judge refers to her level of education but Counsel submitted that this is not a central issue in the appeal. She submitted that risk on return is the issue and there is no proper finding on this.
13. I was asked to find that this must be a material error of law and I was asked to remit the case back to the First-Tier Tribunal for rehearing.

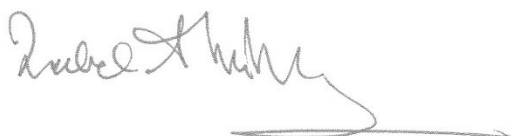
#### DECISION and REASONS

14. The Judge is clearly not satisfied with the evidence which was before him. Although corroboration is not required in asylum cases, if evidence supporting the appellant's statements can be obtained it should be obtained and the Judge found that the appellant had failed to provide sufficient evidence for the burden of proof that she was at risk on return to be discharged.
15. The Judge refers to inconsistencies and a lack of credibility around the appellant's father's detention and refers to failure to provide reasonably available corroborative evidence of her brother's detention and his proceedings.
16. I find that the Judge did consider risk on return and did so adequately. The background evidence does not show that everyone involved in the Gulen Movement will be at risk and the Judge has made his findings based on the background material, which indicates that everyone on the list is not at risk of persecution.

17. The Judge has not given weight to the witness's evidence. The witness has been granted asylum but there is insufficient evidence about his claim and his circumstances to sway the Judge. The only matter which the Judge does accept is that they are on the same list but the Judge does not find the appellant to be credible. He found that there was nothing in the evidence showing that the appellant would be wanted by the authorities in Turkey. The Judge objected to the translations of the court documents, finding that they did not make sense and he also found that there was nothing to connect the appellant to the people referred to in the documents.
18. With regard to credibility and the application to the Commission, this was made on 24 August 2017 and the date of the relevant law is 23 January. The Judge rejected the account of the appellant's father's detention and gave proper reasons for doing so. The Judge also found the evidence about the appellant's brother to lack credibility. Something could have been produced to support this and must have been available if it is true.
19. In the decision the Judge has clearly considered all the evidence before him including the objective evidence. At paragraph 7.4 of the decision the Judge states that the COI Report confirms that actual or perceived involvement in the Gulen Movement can be regarded as political opinion but that establishing such membership does not equate to refugee status. Trials have begun of those suspected of involvement in the coup attempt. The appellant was not involved in this. The appellant states she is on the list of the people whose scholarships have been taken away from them. At 7.6 the Judge refers to there being no evidence of either the ByLock account of the appellant or her bank account. Evidence of these must be available to her. The Judge was dissatisfied with the fully translated documents put before him and the decision from the constitutional court where the appellant is the sole named applicant but the subject matter is not relevant to her. The Judge finds there is no reliable translation of the court documents. In spite of this at 7.10 the Judge deals with what the consequences for the appellant will be if he accepts that her name is on the list. He notes that the appellant did not apply for asylum straight away once her name appeared on the list. At 7.12 the Judge explains why the appellant's chronology does not make sense. At 7.13 the Judge gives proper reasons for not believing that her father was detained. The Judge goes into detail in this paragraph, giving his reasons and at 7.14 he notes that the letter supposedly from her father contradicted the appellant's evidence.
20. The Judge therefore found the central facts of the appellant's claim to be unreliable. The Judge found that the mere appearance of her name on the list is not sufficient for her to succeed in an asylum claim. She claimed only after her father's second detention which the Judge found did not occur. She is awaiting a decision from the Commission. At 7.16 the Judge notes that the appellant does not assert that her friend has been killed or

that any threats have been made against her and her evidence is that anyone she knows who was detained has been released on bail.

21. At 7.17 the Judge deals with risk on return. He points out that there is no warrant for the appellant's arrest and that at worst her scholarship has been cancelled and perhaps her prior academic record annulled. There was no evidence that her passport has been cancelled and she has never previously been arrested or ill-treated by the authorities. She left on her passport for legitimate reasons and has returned to Turkey on several occasions. When she returns to the next time she will do so on her own passport and will not be flagged as a failed asylum seeker. She has not been engaged in any political activities in the United Kingdom and has not been subject to surveillance or monitoring and although she states her family in Turkey are Gulenists her evidence is that they have not been subjected to torture.
22. This is a well thought out decision and reasons are given for all the Judge's findings. There is no material error of law in the Judge's decision.



### **Notice of Decision**

As there are no material errors of law in the First-Tier Tribunal's decision the decision by Judge Norris of the First-Tier Tribunal promulgated on 23 May 2018 must stand.

Anonymity has been directed.

Signed

Date 20 November 2018

Deputy Upper Tribunal Judge I A M Murray