



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04272/2017

THE IMMIGRATION ACTS

Heard at Field House
On 14 September 2018

Decision & Reasons Promulgated
On 18 September 2018

Before

UPPER TRIBUNAL JUDGE BLUM

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

HUSEYIN [A]
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Ms K Everett, Senior Home Office Presenting Officer
For the Respondent: Ms A Nizami, Counsel, instructed by Montague Solicitors LLP

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department (SSHD) against the decision of Judge of the First-tier Tribunal A J Blake (the judge), promulgated on 21 February 2018, allowing the appeal of Mr [A] (hereafter claimant) against the SSHD's decision, served on 13 April 2017, refusing the claimant's asylum and human rights claim.

Background

2. The claimant is a national of Turkey, date of birth 1 January 1996. He arrived in the UK clandestinely on 3 October 2016 and claimed asylum on 24 October 2016. He claimed to hold a well-founded fear from the Turkish authorities based on his association with the HDP (People's Democratic Party) and his perceived association with the PKK.
3. I summarise his claim. He had been involved with the HDP since the age of 15. He handed out leaflets and attended meetings along with his brother, Hassan. He was arrested on three occasions. The first arrest occurred on 11 July 2014, after Hassan left Turkey. The claimant was arrested at his home, detained for one day, accused of being a terrorist but released for lack of evidence. He was then arrested on 28 April 2016 while herding sheep and detained for two days, accused of assisting the PKK, and tortured. He was then arrested on 15 September 2016 on his way home from a HDP meeting. He was detained when he was in a minibus with two friends, held for two days, and tortured. After agreeing to become an informer he was released on condition that he report at the police station every week. Instead of reporting he left Turkey with the assistance of a maternal uncle.
4. The respondent did not believe the claimant gave a credible account of his fear of persecution and rejected his claim to hold a well-founded fear of persecution.

The First-tier Tribunal decision

5. At paragraphs 27 to 54 of his decision the judge set out the reasons advanced by the SSHD for finding the claimant incredible. These included, *inter alia*, an inconsistency in the claimant's evidence as to when he became involved with the HDP (in his interview he said he first got involved with the party when he was 15, which would have been 2011, but, according to the respondent, the party was not formed until 2013), contrasting information regarding the claimant's association with the party (inconsistent evidence as to whether he was a member or supporter of the party), the implausibility of the claimant being arrested because the authorities could not find his brother, even though, on the claimant's account, the authorities already knew of his political activities, and an anomaly in the claimant's account of his third arrest because he stated that he hid near the HDP party building but was arrested on a minibus making his way home.
6. The judge had before him a bundle of documents prepared by the SSHD and a bundle of documents prepared by the claimant's solicitors, which included witness statements from the claimant and his brother. The judge was additionally provided with a medical report prepared by Dr J Hajioff dated 9 January 2018, and a skeleton argument. The judge heard oral evidence from the claimant and his brother, Hassan, but did not summarise that evidence. The judge noted that Hassan had an asylum appeal allowed by Judge of the First-tier Tribunal Adio, who found him to be a credible witness. The judge stated that he considered the

claimant's case with reference to the background evidence before him, but the judge did not identify any particular document or report. The judge found, based on the background material, that anyone who was suspected of involvement with the PKK, or who had a family member in the PKK, could expect some attention from the authorities. Based on the background material before him, which he did not identify, the judge found that those who supported a number of organisations, including the BDP (Peace and Democracy Party) and the HDP, would be associated with the outlawed PKK by the Turkish authorities.

7. The judge referred to **IA and Ors (Risk-Guidelines-Separatist) Turkey CG [2003] UKIAT 00034** and **IK (Returnees - Records - IFA) Turkey CG [2004] UKIAT 00312**, in respect of the systematic and endemic use of torture by the Turkish authorities and the likelihood of records being investigated if a person was held for questioning in Turkey, including at the airport, and especially if they were travelling on a one way emergency travel document.
8. At paragraphs 65 and 83 the judge found the claimant and his brother to be honest and credible witnesses and accepted the claimant's account of his arrests and detentions. The judge stated, at paragraph 83,

I was satisfied that any inconsistencies had been explained by him in the course of evidence and his witness statement.

9. At paragraph 84 the judge accepted the circumstances of the claimant's first arrest, and that when the claimant said in interview that his brother had left home he had not meant that he had left Turkey at that time. At [85] the judge accepted the claimant's account of being detained, accused of helping terrorist groups and to have been tortured and asked to give information on other political parties. The judge found the medial report of Dr Hajioff was to some extent corroborative of the claimant's account, and that the supporting evidence of the claimant's brother was "of assistance." At paragraph 86, and then at paragraphs 89 to 92, having found the claimant credible, the judge concluded that, if removed to Turkey, he would come to the adverse attention of the authorities and there was a real risk that he would be subjected to persecutory ill-treatment. The judge consequently allowed the appeal on asylum and Art 3 human rights grounds.

The grounds of appeal, the grant of permission, the directions issued at the hearing on 18 May 2018, and the parties' submissions

10. The grounds contend that the judge failed to provide any or adequate reasons for his positive credibility findings, and failed to engage with or resolve the inconsistencies and implausibilities identified by the respondent in his Reasons For Refusal Letter, and set out by the judge at paragraph 35 to 59 of the decision. Other than the brief and unsupported finding at paragraph 83 that the claimant's oral and written evidence was sufficient to answer every issue raised, the judge failed to address any of the respondent's adverse credibility concerns. The grounds noted the judge's failure to make a finding as to how the claimant could

be involved with a political party that was only formed 1 to 2 years later. Permission was granted on all grounds.

11. An 'error of law' hearing was listed for 18 May 2018 before Upper Tribunal Judge Dawson. At that hearing it became apparent that there was potentially inconsistent information contained in the SSHD's Country Policy and Information Notes (CPIN) relating to when the HDP was formed. The Presenting Officer sought time to consider this matter and the appeal was adjourned. An email sent by the Presenting Officer to the Tribunal on 11 June 2018 had an attached 'Response to an information request' indicating that the HDP was formed in 2012. A further hearing on 16 July 2018 was itself adjourned as the claimant was represented by a solicitor from Montague Solicitors LLP and not by Ms Nizami, who appeared on the claimant's behalf at the 18 May 2018 hearing. Montague Solicitors LLP were directed to show cause why counsel was not instructed to enable the Tribunal to consider whether a wasted costs order should be made.
12. In her oral submissions at the hearing on 14 September 2018 Ms Everett relied on the grounds and submitted that, regardless of whether the HDP had been formed in 2012 or 2013, the judge failed to resolve factual issues in contention between the parties. The judge did not record any of the oral evidence, even in summary form, and it was not possible to determine whether the judge approached that oral evidence in a lawful manner. While the judge properly looked at the background evidence, which broadly supported the claimant's account, this was not sufficient to obviate the judge's obligation to resolve the identified credibility issues. Assuming HDP was formed in 2012, this still created an apparent inconsistency in the claimant's evidence that the judge needed to deal with.
13. Ms Nizami submitted that the judge had the benefit of hearing the claimant give evidence and was not required to set out a full record of proceedings in his decision. The judge was clearly satisfied that the claimant and his brother were honest witnesses because he said so at paragraphs 65 and 83. The claimant's statement was relatively detailed, and the judge was fully entitled to rely on it to support his positive credibility findings. His conclusions were further supported by reference to Hassan's evidence and the medical report. Bearing in mind that the claimant had limited education, the decision was adequately reasoned.
14. At the conclusion of the hearing I gave brief reasons why I was satisfied the judge materially erred in law.

Discussion

15. Both parties relied on the Upper Tribunal's consideration of the duty to give reasons in **Budhathoki (reasons for decisions)** [2014] UKUT 00341 (IAC). I need only set out the headnote of that decision.

It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.

16. In his detailed Reasons For Refusal Letter the SSHD identified several aspects of the claimant's account that were said to undermine his credibility and led the SSHD to conclude that the applicant's claim was not credible. The judge outlined the SSHD's concerns at paragraphs 27 to 54, which I have summarised above.
17. At paragraph 83 the judge said he was satisfied that the inconsistencies in the claimant's account had been explained by him in the course of his evidence and in his witness statement. It is therefore clear that the judge attached weight to the explanation advanced by the claimant in his oral evidence, in addition to that advanced in his written statement. The judge however failed to set out, even in summary form, the evidence given at the hearing by the claimant and his brother. It is therefore impossible to assess whether the judge was rationally entitled to accept the explanation given by the claimant in his oral evidence, or whether the judge lawfully approached that evidence.
18. The judge has given no satisfactory explanation for accepting the claimant's oral evidence, or indeed the evidence contained in his written statement. The explanations advanced by the claimant in his written statement were not so unassailably clear-cut that no reasonable judge could have rejected them. For example, at paragraph 4 of his written statement the claimant denies having said he was hiding near the HDP building and queries why he would have said this if he had attended a HDP meeting and was detained on the way out. No issue however appears to have otherwise been raised with the reliability of the interpretation. While the judge may have ultimately been entitled to accept the explanation advanced by the applicant, he nevertheless had to give some reason so doing. The SSHD's concerns were not baseless. At paragraphs 6 and 7 of his written statement the claimant explains that, when aged 15, he was involved with the BDP and not the HDP, and that this was what he meant in his interview. Question 61 of the asylum interview however asked the claimant when he first got involved with "the party", and Question 59 makes plain that "the party" in question was the HDP. Once again, while the judge may have been entitled to accept the claimant's explanation, he needed to give adequate reasons. Further, at [88] the judge found the supporting evidence of the claimant's brother was "of assistance", but the judge did not identify the particular aspects of Hassan's evidence that were of assistance (it is unclear, for example, whether the judge found any of Hassan's un-summarised oral evidence of assistance), and he failed to explain why that evidence was of assistance.
19. Even though he set out the SSHD's credibility concerns in some detail in his decision, the judge failed to adequately engage with the points raised by the

respondent. It was incumbent on the judge to resolve the factual issues in contention between the parties, which were central to a lawful assessment of the claimant's credibility and consequently any risk he may face on return to Turkey. By merely stating that the claimant adequately explained the credibility concerns raised by the SSHD, without any further reasoning, the judge fell into material legal error. This accords with the decision in **Budhathoki** because the judge has not resolved key conflicts in the evidence or explained his reasons in clear and brief terms.

20. Having identified a material legal error it was agreed by the representatives that the appropriate course of action would be set aside the decision and remit the case to the First-tier Tribunal to remake the decision afresh. Given that the judge's credibility findings are insufficiently reasoned and that no credibility findings can be maintained, I consider it appropriate to remit the case.
21. Having considered the explanation given by Montague Solicitors in their response to Judge Dawson's oral directions issued on 16 July 2018, and having heard submissions from Ms Everett on behalf of the respondent, I do not consider it appropriate to make a wasted costs order in respect of the hearing on 16 July 2018.

Notice of Decision

The First-tier Tribunal decision contains a material error of law and is set aside. The matter is remitted back to the First-tier Tribunal for a de novo hearing before a judge other than Judge of the First-tier Tribunal A J Blake.



14 September 2018

Signed

Date

Upper Tribunal Judge Blum