



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

Appeal Number: PA/05725/2017

THE IMMIGRATION ACTS

Heard at Field House

On 26th January 2018

**Decision & Reasons
Promulgated**

On 26th February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

**[B D]
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Patyna, Counsel instructed by Montague Solicitors,
London

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

DECISION AND REASONS

**Direction Regarding Anonymity - Rule 14 of the Tribunal
Procedure (Upper Tribunal) Rules 2008**

**Unless and until a Tribunal or court directs otherwise, the
Appellant is granted anonymity. No report of these proceedings**

shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

1. The Appellant is a Turkish national whose date of birth is recorded as [] 1984. On 8th December 2016 he arrived in the United Kingdom. He claimed international protection as a refugee but the Secretary of State refused that application. He appealed. His appeal was heard by Judge of the First-tier Tribunal Farrelly on 13th July 2017 at Taylor House. I note that Ms Patyna, referred to as *Mr Patyna* in the original decision, appeared at first instance.
2. The substance of the Appellant's case is that he had come to the interest of the authorities in Turkey because of their concern that he was associated with the HDP (There was also a history, on his case, of the authorities being concerned that he was associated with the PKK).
3. It was not in dispute that the judge had made findings which were open to him in respect of three detentions but there was an issue in relation to a fourth, which on the Appellant's case had occurred on 10th October 2016. This is dealt with at paragraph 7 of the decision of Judge Farrelly which reads:

"On 10th October 2016 [the Appellant] left work and got into his car which was then boxed in by two other vehicles. He was taken from his car, handcuffed and taken away to a building where he was questioned about the PKK. After twelve hours he was released on condition he act as an informer. He said he was told his wife would be harmed if he did not provide information".
4. Subsequently Judge Farrelly looked to the earlier detentions and came to the view that the Appellant was a person of no particular interest to the authorities, that any involvement with the PKK was low level and that essentially, he was a person who was simply at the wrong place at the wrong time but not a particular target. The appeal was dismissed on all grounds.
5. Not content with that decision, by Notice dated 22nd August 2017 the Appellant made application for permission to appeal to the Upper Tribunal which permission was granted on 31st October 2017 by Judge of the First-tier Tribunal Shimmin. In granting permission Judge Shimmin stated:

"On the basis of positive credibility findings made by the judge it is arguable that the judge erred in finding that the Appellant would not be at real risk of serious harm on return to Turkey".

Judge Shimmin also found it arguable that the judge had failed to apply country guidance fully when considering the Respondent's policy; thus, the matter comes before me.

6. I am grateful to Mr Clarke who quite properly conceded that there was an error of law in the decision. That was because no sufficient finding had been made by the judge with respect to that detention on 10th October 2016. Clearly if, as the Appellant contended, his car was boxed in, then it could hardly be said that he was not being targeted.
7. The judge quite properly reminded himself of the guidance in **A (Turkey)** which set out the various considerations applicable to determine whether or not against a particular factual nexus a person is entitled to the relief sought. Those factors include whether a person had ever been arrested or detained and if so in what circumstances; whether the circumstances of the past arrest and detention indicated that the authorities did in fact view the person as a suspected separatist.
8. Ms Patyna took me through the various risk factors that she said were present on the findings of the judge: that there was financial assistance; that he had been detained; and, she submitted, that there was to be inferred at the very least a continued interest in him. He would not be expected to lie on return. This was a decision which she suggested was otherwise well reasoned.
9. Having read the decision with care it is of note that Judge Farrelly did not find any reason to criticise the Appellant as an unreliable witness. Positive findings were made. The reason why the judge found against the Appellant was because, in my judgment, he had for some reason by the time he had got towards the end of the decision failed to focus on the last arrest of 10th October 2016. However, it is clear to me reading the decision as a whole that had the judge done so he would have found that those events did in fact occur.
10. Mr Clarke quite properly concedes that if a positive finding had been made in relation to that then the appeal would have to be allowed. He invited me not to re-make the decision but to remit it, but in my judgment, that would not be appropriate in this case. There is sufficient for me to be satisfied that the judge would have found that as contended for by the Appellant.
11. In those circumstances I find that there is a material error of law and that the decision needs to be re-made.
12. In the re-making I find that on 10th October 2016 the Appellant did leave work, get out of his car which was boxed in by two other vehicles. I find also applying the lower standard that the Appellant was taken from his car, handcuffed and questioned. I accept also that he was released after twelve hours on condition that he act as an informer. Taken together with other periods of detention I find that the Appellant is at risk on return. I cannot ignore the fact that there is in any event heightened tension in the region but I make plain that that was not the factor that persuaded me that the decision should be re-made in the Appellant's favour. It would

have been re-made in his favour in any event; I refer to paragraph 27 of Farrelly's Decision and Reasons.

13. In the circumstances the **decision** is as follows. The decision of the First-tier Tribunal is set aside and re-made. The appeal is allowed on international protection grounds. The Appellant is a refugee. The appeal is allowed on human rights grounds. Necessarily the appeal is dismissed on humanitarian protection grounds as the Appellant is a refugee.

Signed

Date: 22 February 2018

Deputy Upper Tribunal Judge Zucker