



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

Appeal Number: PA/05806/2018

THE IMMIGRATION ACTS

Heard at Newport

On 13th November 2018

Decision & Reasons

Promulgated

On 27th November 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

**MR MEHMET [D]
(ANONYMITY NOT RETAINED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Panagiotopoulou

For the Respondent: Mr Howells

DECISION AND REASONS

Introduction

1. The Appellant born on 15th September 1993 is a citizen of Turkey. The Appellant was represented by Miss Panagiotopoulou of Counsel. The Respondent was represented by Mr Howells a Senior Presenting Officer.

Substantive Issues under Appeal

2. The Appellant had claimed asylum on 12th December 2017. That application had been refused by the Respondent on 16th April 2018. The Appellant had appealed that decision and his appeal was heard by Judge of the First-tier Tribunal Rowlands sitting at Hatton Cross on 6th June 2018. The judge had dismissed the Appellant's appeal on all grounds. Application for permission to appeal was made on 23rd August 2018. Permission to appeal was granted by First-tier Tribunal Judge Shimmin on 7th September 2018. Permission was granted in respect of paragraphs 3, 5, 4, 6 and 7 of the Grounds of Appeal.
3. Directions were issued for the Upper Tribunal to firstly consider whether an error of law had been made by the First-tier Tribunal or not and the matter comes before me in accordance with those directions.

Submissions on Behalf of the Appellant

4. Miss Panagiotopoulou did not deal with grounds covering the alleged error in respect of consideration of medical evidence as that had not been granted. It was submitted the judge had failed to give reasons or findings in relation to the Appellant's past treatment and detention. It was also said the judge had made a finding at paragraph 35 that the Appellant was an ordinary member of the HDP and was satisfied therefore that that would not raise a risk on return. It was said that there was ample country evidence including Home Office material showing that ordinary members or supporters could potentially be at risk of detention. Reference was made to a number of those matters within the bundle. It was submitted the judge had failed to have regard to those country matters. It was further said the judge had ignored or failed to make a finding on whether the authorities had retained the Appellant's passport and therefore would know his identity.

Submissions on Behalf of the Respondent

5. Mr Howells accepted that the country material including the Home Office guidance indicated that ordinary members of the HDP could come to the attention of the authorities, for example if they were involved in demonstrations. It was said that the findings at paragraph 33 were sufficient to show that the judge had made adequate findings on credibility that the Appellant had not been detained in the past and therefore had not come to the attention of the authorities.
6. At the conclusion I reserved my decision to consider the submissions and the evidence. I now provide that decision.

Decision and Reasons

7. The judge has set out the background, evidence and submissions made at the hearing in some length over 34 paragraphs. However the judge's consideration and analysis of the evidence was contained briefly within three paragraphs only. At paragraph 35 the judge said "I am prepared to

accept that he has provided documentary evidence to support his claim to be an ordinary member and no more. I am not satisfied that this, in itself, would raise a risk to him of detention, ill-treatment or torture on return". At paragraph 36 he stated "the Respondent relies on the country information suggesting that low level people like him are not of adverse interest". He did not accept as credible the Appellant had been arrested or detained on three occasions as claimed. This was because he said there was no evidence to support the claim and he found the Appellant did not pursue a visit visa application nor leave Turkey speedily following those incidents.

8. The judge in his brief examination of the evidence and submissions appears to have concluded that ordinary members of the HDP would not be at risk. The country material including the Home Office guidance however does show, as accepted by Mr Howells, that ordinary members can be at risk if they are known to the authorities, for example by taking part in demonstrations. The Appellant's case was that he accepted he was only an ordinary member. However he had claimed to have distributed leaflets and attended meetings at election time. He further claimed to have been arrested at a demonstration and thereafter had been arrested twice at his home following police raids. Those were the core claims in dispute as noted in the refusal letter.
9. Whilst the country material did not demonstrate a presumption that all ordinary members of the HDP were at risk, it did show that an ordinary member could be at risk of adverse attention dependent upon his activities and whether by such he had come to the adverse attention of the authorities. It was necessary therefore for the judge to consider those activities claimed by the Appellant that had drawn him adversely to the attention of the authorities. The judge did not provide adequate reasons why he dismissed the Appellant's claimed arrest and detention, essentially relying on the failure of the Appellant to pursue a visa application in a timely fashion or leave Turkey sooner. The speed or tardiness of the Appellant's timetable were matters that postdated his claimed arrest and detention. It was incumbent upon the judge to have considered the credibility or otherwise of the core issues raised by the Appellant in order to conclude whether or not he had been arrested or detained and the impact therefore on risk on return. Tardiness in pursuing a visa application or leaving Turkey may well have been factors to consider but considered in isolation did not provide an adequate assessment of the Appellant's claim. It may be in part the judge was of the belief that there was no risk to an ordinary member of the HDP on return generally.
10. The lack of adequate assessment and reasoning in respect of those core issues in this case did lead to a material error of law.


Notice of Decision

11. I find that a material error of law was made by the judge in this case and I set aside the decision of the First-tier Tribunal. I direct that the matter is

remitted back to the First-tier Tribunal for a de novo hearing, not to be heard by Judge of the First-tier Tribunal Rowlands.

No anonymity direction is made.

Signed

 Date 21/01/18

Deputy Upper Tribunal Judge Lever

DIRECTIONS

- (1) This case should be listed at Newport hearing centre given the Appellant's home address.
- (2) Any request for the services of an interpreter must be made to the Tribunal in writing at the latest seven days in advance of the scheduled hearing date.
- (3) The parties should produce an indexed and paginated bundle of documents including all the material that was before the First-tier Tribunal together with any supplementary material and serve such bundle on the Tribunal and the other party at least ten working days before the scheduled hearing date.

Signed



Deputy Upper Tribunal Judge Lever

Date

