



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

Appeal Number: PA/05814/2017

THE IMMIGRATION ACTS

Heard at Field House

On 5 March 2018

**Decision & Reasons
Promulgated
On 26 March 2018**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

**DENIZ UMEK
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Collins instructed by Sentinel Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Turkey. He appealed to the First-tier Tribunal against a decision of the Secretary of State of 2 June 2017 refusing to grant asylum. In addition the respondent concluded that the appellant did not qualify for humanitarian protection or for discretionary leave.
2. The appellant claims to be at risk on return to Turkey on account of his activities with the BDP and HDP political parties. He said that the BDP was shut down in 2014 and became the HDP but he was never a member of

either party. His brother was a member of the BDP. That party had been shut down because it was affiliated with the PKK terrorist organisation. The appellant's evidence was that he joined meetings with the BDP/HDP and went to their marches and distributed leaflets. He visited the party offices and had tea there but he did not attend meetings. The HDP unlike the BDP had not been shut down on account with links with the PKK. He denied that the authorities had evidence of him being linked with the PKK.

3. He gave an account of having problems with the authorities on 20 September 2016 when he was at university at which time there was a police raid and he was taken with some of his friends to the police station and ill-treated. He was released some four days later. Subsequently two plain clothes policemen stopped him when he was on his way to classes some ten days later and blindfolded him and took him to a basement and detained him for three days and ill-treated him. He was released because he begged them and told them he only studied and did not have anything to do with anything. On a subsequent occasion one of the plain clothes policeman who had been involved in that arrest saw him at the university and pointed his gun at him and told him he would teach him a lesson soon and would kill him and throw his body into the mountains. It was after this incident that the appellant decided to come to the United Kingdom. He also claims that before he had any involvement with the authorities members of the MHP (National Turkey Party) had beaten him up after he attended marches because his political views were different from theirs and they told him not to attend marches again. That had happened in 2014.
4. The judge considered all the evidence and concluded that the core of the appellant's claim as to what would happen to him in Turkey and his claim to fear persecution on return was not credible. The judge found that if he had involvement with the HDP it had been as a low-level supporter only and not as someone who would be of interest to the authorities and his claim to have been arrested and ill-treated by the authorities was not credible. Accordingly the appeal was dismissed.
5. In his grounds of appeal the appellant argued that the judge had erred in failing to provide any proper or adequate analysis of the copious background material which had been provided and there was simply a bare reference at paragraph 19 to the judge having given consideration to all the documents in the papers. It was argued that that evidence showed that even low-level separatist activities were targeted by the Turkish authorities particularly in the volatile southeast of the country.
6. It was also argued that the judge had erred in not considering the matter through the extant country guidance of IK [2004] UKIAT 00312. It was argued that the judge was required to make a careful and nuanced analysis of risk on return on the accepted facts. It was also argued that the judge had highlighted aspects of the evidence which were unsatisfactory and had overlooked those parts of the appellant's claim

which were accurate and tied in with the background material and available information on Kurdish separatist groups in Turkey.

7. Permission to appeal was refused by a judge of the First-tier Tribunal, but subsequently a judge of the Upper Tribunal granted permission on the basis that it was arguable that despite the detailed credibility findings the judge, though indicating that the appellant was a low-level supporter of the HDP, had not analysed how the appellant on his individual facts would be perceived nor assessed risk to him on return with reference to IK.
8. In his submissions Mr Collins referred to the fact that the appellant was 21 at the date of hearing and was an Alevi Kurd who did not have a valid Turkish passport and had left Turkey from Gaziantep in the conflict area. His brother was a refugee, as appeared to be accepted at paragraph 23 of the judge's decision. There was a family background in separatist politics as could be seen from his answers at interview to questions 12, 23, 27 and 57 referring to his brother, father and uncles. It was difficult to see that the appeal could properly be assessed without taking into account the background material. In the bundle were such matters as the US State Department Report of 2016 with reference to torture and arbitrary detention and at pages 49 onwards the CIG of March 2016 with regard to the HDP. This referred largely to higher profile members, but at paragraph 8.1.1 there was reference also to supporters, at paragraph 68 and paragraph 8.1.3 the HDP CIG referring to particular problems for people in the southeast which was the conflict zone.
9. The judge had made scant reference to this material which should have been the starting point, by contrast to the endorsement of the points made in the refusal letter. The judge had rejected the two claimed detentions but accepted that the appellant was a low-level supporter of the HDP and given that and the other facts it was difficult to see how the determination could stand.
10. In IK the Tribunal set out in its country guidance risk factors and noted that this was not a box ticking exercise. It could be that the appellant there was never detained or a member of HADEP but perhaps for his family connection as he was a low-level supporter of the PKK and that was a crucial factor and there was a family connection with the PKK.
11. IK was to be found at page 171 of the bundle with the risk factors set out at paragraph 14, paragraphs 82 to 85 dealing with such matters as the likely period of detention on return, the question of what would happen in detention and further checks in the home area. The judge needed to consider what checks would be made including the relevance of the acceptance that the appellant was a low-level supporter of the HDP. The judge had failed to refer to IK or to analyse the situation properly. The facts of IK could be seen in particular at paragraph 129. A lesser argument was that made at paragraph 7 of the grounds concerning the

failure to concentrate on the accurate parts of the account. The case required a nuanced analysis of the accepted facts.

12. In her submissions Ms Everett argued that the judge's decision should stand. The appellant had been found not to be credible in almost every respect and that was not challenged. The judge had set out in significant detail why he rejected the claim. The position was that at its highest at paragraph 46 where the judge concluded that the core of the appellant's claim as regards what had happened to him in Turkey and to fear persecution on return was not credible and even if he were low-level that had to be on the spectrum. The judge had given cogent reasons for not accepting the credibility of the claim.
13. With regard to the current situation in Turkey on the basis of the accepted factors, it was unclear what the basis of the brother's asylum claim was although it was accepted it was likely to be connected with politics, but it was not known what the association was. It was true that there was violation of human rights in Turkey and circumstances of impunity, but there was not background evidence to show that anyone from that area who had not come to the authorities' attention and did not really do anything politically was at risk. In IK the facts were that there were family connections with the PKK and the PKK was proscribed not just in Turkey but in many countries so there was a distinction there and also there was no further information about the brother albeit as was noted earlier likely to be on the basis of political activity. There was not a strong enough argument about the background evidence concerning a possible low-level supporter of a political party with no history of arrest or detentions as being at risk on return. The case needed more to succeed than the fact of a brother who was a refugee. The ethnicity of the appellant was a significant part of his political landscape and conflict but it was not enough to show risk on return.
14. By way of reply Mr Collins argued that even if one took the findings at their lowest the appellant was not credible. With regard to the two detentions it was the case that the brother was not part of the appeal as he had been in the United Kingdom at all material times and could not say what had happened to the appellant in Turkey. It seemed to be accepted that the brother was a refugee and also the father was a member of the BNP as part of the claim and also the two uncles were politically affiliated and the family had had to move house. The family was perceived as being supporters of the separatist cause. Paragraph 3.1.1 of the CIG referred to the BDP and the PKK and at page 55 there was an accusation of links to the PKK and the BDP seemed to be seen as the political wing of the PKK. It was not argued that it was enough for the claim to succeed as the appellant was a Kurd Alevi and had no passport and was a low-level supporter at risk but it was argued there had not been a proper assessment. What had been said by Ms Everett was doing the judge's job for her. There was no marrying of the facts of the case with the background material or to IK. That meant that the analysis was flawed.

15. I reserved my determination.
16. The essential challenge in this case is to the failure as it is said to be by the judge to take proper consideration of the background material when considering the appellant's claim to be at risk as a low level separatist activist from the southeast of Turkey and the failure to take into account the guidance in IK. Mr Collins placed lesser weight on the point at paragraph 7 of the grounds that the judge had concentrated more on the unsatisfactory elements on the parts of the claim that which were accurate. I do not read this as being a challenge to the judge's credibility findings and indeed that was not the line taken by Mr Collins in his submissions.
17. As regards the credibility findings, it is clear from paragraph 46 that the judge did not find credible the core of the appellant's claim with regard to what happened to him in Turkey and his claim to fear persecution. In particular the claim to have been arrested and ill-treated by the authorities was found to be lacking in credibility and to have been fabricated. As regards the remark by the judge also at paragraph 46 that she found that if the appellant had had any involvement with the HDP it has been as a low-level supporter only and not as someone who would be of interest to the authorities, I consider that that was a matter of taking things in the alternative rather than accepting that the appellant had been involved with the HDP as a low-level supporter. But it may be sensible to consider whether the claim could have succeeded on that basis in any event in considering the challenges to the judge's decision.
18. It is helpful I think to look at the skeleton argument that was before the judge which was drafted by and the appellant was represented by Counsel other than Mr Collins. This as I read it is essentially geared to a claim on the basis that the appellant could show that he had previously come to the adverse attention of the authorities due to suspected involvement of the PKK. In particular it is said that if the appellant is found credible he fears persecution at the hands of the state and would not be able to avail himself of protection from the authorities or internal relocation. The submissions in the skeleton argument are essentially premised on the fact of the appellant being known to be involved with the HDP and therefore being seen to be involved with the PKK. There is reference from the US State Department Report to the use of anti-terror laws to silence political opponents and not only high-profile figures, but it includes reference to suspected PKK sympathisers and allegations that many detainees had no substantial link to terrorism and were detained to weaken the HDP and the DBP. There is also a quotation from the CIG concerning the HDP where it is said that where ordinary members of the HDP have come to the adverse attention of the authorities this has generally been whilst participating in demonstrations and rallies and an ordinary member would not otherwise generally attract the adverse attention of the authorities on account of their political beliefs. It is said that however if the person is a senior

member of the HDP or has otherwise come to the adverse attention of the authorities because of suspected involvement with the PKK or support for autonomy for Kurdish people then they may be at risk but each case must be assessed according to its individual facts. It is perhaps worth noting in passing also there is no reference to IK in the skeleton argument. I accept of course there was a good deal of background evidence in the bundle and also a copy of IK, but inevitably the judge would be likely to focus consideration on the specific submissions that were put before her.

19. In light of the judge's findings, taken at their highest, the appellant is an Alevi Kurd from the southeast who would return to Turkey without a passport, and as a low-level supporter of the HDP who had never come to the adverse attention of the authorities. When one looks at the guidance in IK the list of factors which are exhaustively considered to be material in giving rise to potential suspicion in the minds of the authorities concerning a particular claimant, a good deal of such matters is geared towards a history of adverse interest on the part of the authorities in the claimant in question. There are however factors relevant to this case, including that the appellant has family connections with a separatist organisation, Alevi faith, lack of a current up-to-date Turkish passport. With regard to the first of these, it is relevant to note that in light of the judge's findings, the appellant had never experienced any problems on account of connections with his father, brother and uncles and their separatist connections other than the fact which the judge does not appear to have addressed that they had to move house regularly. That is far from persecution. The judge does not appear to have been taken to any evidence and nor have I to indicate that a person with the kind of profile that the appellant would have on return even taken at its highest would place him at risk. There is no indication that the authorities have ever been aware of his political sympathies except insofar as the family found it necessary to move house periodically. So insofar as the judge did not specifically address the appellant's background material referred to by Mr Collins, it does not seem to me that that evidence indicates that a person with a profile as found by the appellant would face a real risk on return to Turkey. In that regard particularly I note paragraph 3.1.5 of the CIG which I have referred to above, which emphasises the need for the person to have come to the adverse attention of the authorities because of suspected involvement with the PKK as placing them at risk. Nor do I consider the judge could be said to have erred materially in not referring to the IK guidance. It was not the matter that was referred to in the appellant's skeleton before the judge, and the very small number of the relevant factors to be taken into account under IK that are relevant to this case are not such as in my view could properly be said to give rise to a real risk on return. Accordingly I consider that it has not been shown that the judge erred in law in his evaluation of this claim and her decision dismissing the appeal is therefore maintained.

20. No anonymity direction is made.

A handwritten signature in black ink, appearing to be 'Allen', written in a cursive style.

Signed

Date

Upper Tribunal Judge Allen