



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

Appeal Number: PA/09193/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 22 February 2018**

**Decision and
Promulgated
On 19 April 2018**

Reasons

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

**S G
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Anonymity was granted at an earlier stage of the proceedings because the case involves protection and child welfare issues. I find that it is appropriate to continue the order. 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.

Representation:

For the appellant:

Ms S. Anzani, Counsel instructed by Virgo Solicitors

For the respondent:
Officer

Mr N. Bramble, Senior Home Office Presenting

DECISION AND REASONS

1. The appellant is an unaccompanied asylum-seeking child from Turkey. He appealed the respondent's decision dated 05 September 2017 to refuse a protection and human rights claim.
2. First-tier Tribunal Judge Mill ("the judge") dismissed the appeal in a decision promulgated on 23 October 2017.
3. The appellant appeals the First-tier Tribunal decision on the following grounds:
 - (i) The judge failed to give sufficient weight to the appellant's age and background in assessing the credibility of his account.
 - (ii) The judge erred in a series of findings relating to the appellant's credibility.
 - (iii) Insufficient reasons were given for some of the judge's findings.
 - (iv) The judge erred in his findings relating to risk on return in light of the evidence of torture and ill-treatment in detention.

Decision and reasons

4. Having considered the First-tier Tribunal decision and the submissions made by both parties I conclude that the First-tier Tribunal decision involved the making of errors of law.
5. The respondent accepted that the appellant was beaten by the police at a demonstration in Gaziantep in February 2015. The appellant's account was that the police gave him a warning while he was in hospital, but by his own admission, the respondent found that he was not formally arrested. The appellant was only 15 years old at the date of the incident.
6. The judge accepted this concession on the part of the respondent, but went on to reject the second aspect of the appellant's account, which involved his claim that he was approached to assist members of the PKK when he was in the mountains. He returned to the village to obtain supplies. When he returned to the mountains with the supplies he saw gendarmes. He abandoned his donkey, which he says was found by the gendarmes who tracked it to his home. His father was arrested and taken to the police station for two nights. They told him that his son was helping the PKK.
7. The judge made reference to the appellant's age and took into account the need for flexibility in assessing the credibility of his claim [21 & 25]. It cannot be said that the judge did not take into account the appellant's young age as part of his overall assessment.

8. The judge provided a series of reasons for rejecting the second aspect of the appellant's account. Some findings were open to him to make, but others relied wholly on his own assessment of the plausibility of the account without putting the claim in the context of the appellant's background or the background evidence relating to the conflict between the government and the PKK in Turkey.
9. Mr Bramble accepted that the judge's finding at [27] amounted to an error, but asserted that it did not make a material difference to his overall assessment. The judge reasoned that the appellant would not assist the PKK because "he knows the consequences of assisting members of the PKK. It is unlikely the Appellant would assist them.". The consequence of such reasoning is that no one would assist the PKK if they knew it could put them at risk. The reasoning is irrational. The background evidence shows that the PKK operates in south east Turkey. When placed in the proper context of the background evidence the PKK enjoys some support amongst local Kurds and/or some Kurds might assist them through fear. The appellant's evidence was that he feared the PKK, which is why he agreed to do as they asked. There is nothing inherently implausible about the fact that a young man might acquiesce to the demands of members of an armed group.
10. Ms Anzani criticised other aspects of the judge's reasoning. In several paragraphs the judge makes statements relating to the credibility of the appellant's account without giving reasons for his conclusions. For example, at [20] the judge thought that it was unlikely that the appellant would have been able to raise funds from family members to buy supplies for the PKK, but gives no reasons to explain the finding. If the appellant's age was considered, it is not inherently implausible that the only way he could obtain the funds would be through family members. At [33] the judge said that it was difficult to conceive how the gendarmes could identify the appellant without giving further reasons to support the finding. In the context of a rural area of south east Turkey, it is not all that difficult to conceive that the local police could make enquiries in local villages to identify the owner of the animal. At [38] the judge stated that it was unlikely that the appellant would have managed to escaped detection for 2-3 months in the home of his father's friend, but gave no reasons to explain how or why he came to that conclusion.
11. The final point made by Ms Anzani related to risk on return. The judge found that, even if the claim was taken at its highest, the appellant faced prosecution rather than persecution. Although he referred to some of the background evidence at this point, he failed to consider the fact that there is a risk of torture and ill-treatment in detention even if the Turkish authorities have a legitimate interest in prosecuting suspected members of the PKK. Having decided to assess the claim at its highest, it was incumbent on the judge to consider such evidence. The fact that the appellant had come to the attention of the authorities in the past following the demonstration in 2015 was accepted. Even if the appellant was not

formally arrested, this was a matter that might be relevant to a proper assessment of future risk (see paragraph 339K immigration rules). The judge failed to consider a material issue.

12. Although many of the points made by the judge were open to him to make, and none of the points outlined above, if taken individually, might justify setting aside the decision, I am satisfied that the combination of points undermines the safety of the overall credibility findings made by the First-tier Tribunal. Given that an asylum claim requires anxious scrutiny, I am satisfied that the First-tier Tribunal decision involved the making of an error of law and that the decision must be set aside. The parties agreed that the appropriate course of action is to remit the appeal to the First-tier Tribunal for a fresh hearing.

DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

The decision is set aside and remitted to the First-tier Tribunal for a fresh hearing

Signed  Date 18 April 2018
Upper Tribunal Judge Canavan