



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02680/2019

THE IMMIGRATION ACTS

Heard at Field House
On 19th September 2019

Decision & Reasons Promulgated
On 24th September 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

TS
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Khan of Acharyas Solicitors
For the Respondent: Miss R Bassi, HOPO

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Wilding made following a hearing at Taylor House on 24th April 2019.

Background

2. The appellant is a citizen of Turkey born on 15th December 1997. He arrived in the UK on 29th June 2017 and claimed asylum on the same day. He was refused on 12th March 2019 and it was this decision which was the subject of the appeal before the Immigration Judge.

3. The appellant is a Turkish national of Kurdish ethnicity and a follower of the Alevi Muslim faith. He is an HDP supporter, having started his interest in the party in 2014 and becoming an official member on 1st May 2018.
4. The judge accepted that the appellant was arrested in December 2017 after attending the funeral of a person who had been a member of the PKK. He subsequently left Turkey unlawfully, but returned when he was detained at the airport for four hours and questioned. He was then arrested for a second time on 1st May 2018 after attending a Labour Day celebration.
5. On both occasions he was taken to a police station and held for 24 hours, but no charges were brought against him. He was not ill-treated. Following the second detention, he left Turkey for a second time and came to the UK.
6. The judge accepted that the appellant was a low level member of the HDP and that he had been detained twice. He did not accept that there was any ongoing interest in him, rejecting the appellant's evidence that the authorities had visited his home. The judge gave detailed reasons for his findings and there is no challenge to them in the grounds.
7. The judge considered both relevant country guidance cases, namely IK (Returnees - Records - IFA) Turkey CG [2004] UKIAT 00312 and IA HC KD RO HG (Risk, Guidelines, Separatist) Turkey CG [2003] UKIAT 00034 and concluded that the appellant would not be at risk on return.

The Grounds of Application

8. The appellant sought permission to appeal on the grounds that the judge had erred in not giving any reasons why the appellant would not be at risk as a result of his Kurdish ethnicity or Alevi faith, nor for his finding that the appellant was a low level member of the HDP. It was argued that the judge had not adequately considered the appellant's profile within the HDP in his assessment of risk on return.
9. Second, the judge had not properly considered paragraph 276ADE and whether there would be very significant obstacles which could arise for the appellant on return and whether he would be subjected to significant harassment in Turkey.
10. Permission to appeal was granted by Judge Ford, who stated that the judge's assessment of the background evidence and the assessment of risk on return in light of his accepted Kurdish ethnicity, Alevi faith and history of two detentions, arguably involved the Tribunal in making a material error of law.
11. On 9th September 2019 the respondent served a reply defending the determination.

Submissions

12. Mr Khan submitted that the judge had failed to properly take into account the background evidence, in particular the Turkish government's present attitude towards members of the HDP in connection with their links with the PKK. He referred to the CPIN note on Turkey dated August 2018 which recorded that

thousands of members of the HDP had been arrested since the coup attempt of July 2016 and by April 2018 approximately 850 people had reportedly been detained for taking part in demonstrations or protesting on social media about Turkish military operations in Syria. Furthermore, some HDP members had been arrested by the authorities and charged with involvement with either the PKK or with supporting autonomy for Kurds. The judge was wrong to conclude that the appellant would not be of any interest to the authorities, bearing in mind the fact that the appellant was a known member of HADEP who had been arrested on two occasions.

13. Miss Bassi defended the determination and argued that the judge had come to sustainable conclusions properly supported by adequate reasons based on the evidence before him.

Consideration as to whether there is a Material Error of Law

14. I am not persuaded that there is any error of law in this determination.
15. The judge set out the appellant's case at the start of his determination and accepted that the appellant had had difficulties with the authorities on two occasions as a consequence of his involvement with HADEP. In doing so, he noted that the appellant had been arrested as part of an intelligence-gathering exercise and on both occasions, he was released without charge after a short period of time. He did not claim to have been tortured on either occasion.
16. The judge recorded that the appellant had never got into trouble with the authorities as a result of his activities with the HDP.
17. In IK the Tribunal set out their conclusions in relation to risk on return to Turkey. They considered the computerised GBT system, which comprises only outstanding arrest warrants, previous arrests, restrictions on travel abroad, possible draft evasion, refusal to perform military service and tax arrears. Arrests as comprised in the GBTS require some court intervention and must be distinguished from detentions by the security forces followed by release without charge.
18. Accordingly, the two detentions which the appellant has suffered would not be recorded on the GBTS. Indeed, that is consistent with his return to Turkey after the first detention when he was held for only four hours and questioned before being released.
19. Whilst the appellant would be returning on a one way emergency travel document and therefore identifiable as a failed asylum seeker, there is nothing in the country guidance case which establishes that he would be at risk of anything other than the type of investigation which took place when the appellant returned in 2017.
20. In summary, the appellant has been briefly held twice in the past following attendance at large gatherings but released on both occasions without any charge or further interest in him. There is no indication that the authorities view him as a suspected separatist. He was not even placed on reporting conditions.

21. The judge reached credibility findings which were entirely open to him and indeed which are not challenged. He applied the country guidance as he was required to do, summarising his findings at paragraph 25 as follows:

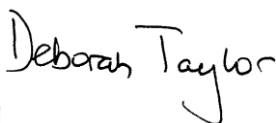
“In my view the fact that the appellant is Kurdish, of the Alevi faith, a member of the HDP and has been detained on two unrelated occasions following larger scale round ups does not mean he is at real risk of persecution on return. He is at best a low level member of the HDP who carries out activities for them which he has never come into trouble doing. Why that would change has not been explained.”
22. The grounds do not refer to a lack of consideration of the background evidence but in any event there is no basis for concluding that the judge did not take it into account in reaching his assessment of the possible risk on return.
23. So far as Ground 2 is concerned, it stands or falls with Ground 1. On the judges sustainable and unchallenged findings, there could be no very significant obstacles in the context of paragraph 276ADE, which in any event was considered by the judge at paragraph 33.
24. The grounds do not disclose any material error of law and the appellant’s appeal is dismissed. The judge’s decision will stand.

Notice of Decision

The appeal is dismissed.

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.



Signed

Date 23 September 2019

Deputy Upper Tribunal Judge Taylor