



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

Appeal Number: PA/05630/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 24 January 2019**

**Decision & Reasons
Promulgated
On 15 February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**OD
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. C. E. Moll, Counsel instructed by Howe & Co. Solicitors
For the Respondent: Ms. K. Pal, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against a decision of First-tier Tribunal Judge Chana, promulgated on 25 June 2018, in which she dismissed the Appellant's appeal against the Respondent's decision to refuse a grant of asylum.
2. As this is an asylum appeal I make an anonymity direction.
3. Permission to appeal was granted as follows:

“The grounds take issue with the judge’s credibility findings. It is argued that she wrongly proceeded on the basis that the HDP was an illegal party, that she failed to make findings on whether she accepted that the appellant was arrested and detained on five occasions and that she reached conclusions which were contradictory to the country evidence and country guidance.”

4. The Appellant attended the hearing. I heard brief submissions, following which I stated that the decision involved the making of a material error of law. I set the decision aside.

Error of Law

5. The Judge failed to refer to any of the background evidence provided by the Appellant regarding the current situation in Turkey, and has made her credibility findings without taking this evidence into account.

6. At [24] the Judge refers to caselaw from 2004. She states:

“The appellant claims that he was released by the authorities on all five occasions after his arrests. On four occasions the was [sic] released after one day and on the fifth occasion he was kept for three days and released. Therefore, the appellant was released on all five occasions. In the case of **Fatih Andic [2004] EWCA Civ 557 (Court of Appeal) and IAS 4 June 2004** the Court of Appeal said that it was no flaw of reasoning to conclude from the fact that the applicant had been released without charge after each detention that the Turkish authorities had no further interest in him.”

7. The only other reference to background evidence is found at [30] where the Judge states:

“I consider the background evidence on Turkey as to whether the appellant’s membership of the HDP will bring him to the adverse attention of the authorities in Turkey. Background information on Turkey states that the HDP is an illegal political party which was formed in 2013.”

She then proceeds to outline in general terms some background evidence, but without specific reference.

8. At [36] there is reference to the case of **IK (Returnees - Records IFA) Turkey CG [2004] UKIAT 00312**, and the assessment that needs to be conducted. This case is dated 2004, and is therefore over fourteen years old.

9. There is no reference in the decision to the fact that in July 2016, some 12 years after the cases on which the Judge relies, there was a coup in Turkey. There is no reference to the background evidence provided by the Appellant relating to the current situation in Turkey. The Appellant provided background evidence from the UNHCR, the Immigration and Refugee Board of Canada, Human Rights Watch and Amnesty International (pages 13 to 66 of the Appellant’s bundle), but there is no reference to this evidence in the decision.

10. At the hearing before me I was referred to just two paragraphs of this evidence which indicate that the situation has changed significantly. The report from the Immigration and Refugee Board of Canada refers at [2.2] to thousands of HDP militants and supporters being in custody or incarcerated (page 15). The report from the UNHCR on the situation in south east Turkey refers to what has happened in the wake of the July 2016 coup, and the number of people who were arrested and detained (page 54).
11. Even if the Judge was not referred to each and every specific paragraph, there is no reference at all to the fact that a coup took place in 2016, and the subsequent treatment of HDP supporters. Further, from what is said by the Judge at [30], it is clear that she has not properly considered the background evidence. She states that the background information states that the HDP is an illegal political party. However, the HDP is a legal political party and was accepted as such by the Respondent.
12. The Judge's consideration of the Appellant's account of being arrested and detained on five occasions is carried out with reference only to the 2004 caselaw, rather than against the backdrop of the evidence of the current situation. The Appellant's evidence is that two of these arrests and detentions took place after the 2016 coup, but there is no reference to the changed situation in Turkey following the coup.
13. I find that the failure to consider the background evidence regarding the current situation in Turkey, the reliance on case law from 2004, and the mistake of fact regarding the legality of the HDP, have affected the Judge's credibility findings and amount to material errors of law. I find that the credibility findings are flawed given that the Judge considered the Appellant's account without considering the current situation in Turkey. Her finding that the Appellant was not credible or truthful, which is the only finding from which it can be inferred that she did not accept his account of being arrested and detained, cannot stand.
14. I find that the decision involves the making of a material error of law. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party's case to be put to and considered by the First-tier Tribunal. The credibility findings are flawed and therefore, given the nature and extent of the fact-finding necessary to enable this appeal to be remade, having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.

Notice of Decision

15. The appeal involves the making of a material error of law and I set the decision aside.
16. The appeal is remitted to the First-tier Tribunal to be reheard.
17. The appeal is not to be listed before Judge Chana.

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 12 February 2019

Deputy Upper Tribunal Judge Chamberlain