



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

Appeal Number: PA/10090/2017

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre

On 4th April 2019

**Decision & Reasons
Promulgated
On 30th April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**KAYA [S]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Mensah (Counsel)

For the Respondent: Mr C Bates (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge A J Parker, promulgated on 29th October 2018, following a hearing at Manchester on 3rd October 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Turkey, and was born on [~] 1986. He appealed against the decision of the Respondent dated 22nd September 2017, refusing his claim for asylum and for humanitarian protection, pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The essence of the Appellant's claim is that he has objected to military service in Turkey, on the basis that he is of Kurdish ethnicity, and is against killing, and believes that if he is returned back to Turkey he will be subjected to military conscription, whereupon he will be deployed in areas where he will have to fire upon fellow Kurdish people. The Appellant had earlier been a student whereby he was not required to undergo military service. Now that he was not, he would be compelled to do so.

Submissions

4. At the hearing before me on 4th April 2019, there was agreement between Ms Mensah, appearing as Counsel for the Appellant, and Mr Bates, a Senior Home Office Presenting Officer, that the judge had erred in law in a number of respects. He had failed to have regard to the relevant country guidance case of **IA and Others (Risk - Guidelines - Separatist) Turkey CG [2003] UKIAT 00034**, given that the Appellant had claimed to have been a PKK sympathiser, and had previously been arrested, and been detained. Second, the judge had failed to provide adequate reasons. Third, he had failed to make relevant findings of fact. Fourth, the judge's approach to the expert evidence was wrong. In this respect, it was well established that the judge has to apply a "holistic" approach to all the evidence. This requires the judge to give good reasons why he rejects expert opinion (see **KV (Sri Lanka) [2017] EWCA Civ 119**).
5. It is also well established that a Tribunal cannot make adverse findings of credibility first and then dismiss an expert report after that (see **M (DRC) [2003] UKIAT 00054**). However, the judge in this case had proceeded on precisely this basis (at paragraph 36 of the determination). In addition, the judge had made findings that the Appellant was in business. He had referred to testimonies from customers of the barber's shop that the Appellant had until April 2017. That appeared to suggest that the Appellant's business was still operating. This was not the case.
6. There was incontrovertible evidence (see page E1 of the Respondent's bundle) which showed that all those testimonies were filed and predated, the Home Office cover letter of 27th April 2017. It was not clear what weight the judge gave to this evidence. The funds to pay the fine to avoid military service in October 2018 was something that needed to be assessed, and there had been a failure by the judge to do so.

7. Mr Bates also added that the judge had not made a finding on whether the Appellant had actually been detained. When the judge observes that, as a low level supporter of the PKK, the Appellant may be at risk on return, he refers to the Appellant having been detained, but it is not clear whether this is drawn from the refusal letter, or is actually a finding of the judge himself.
8. In the circumstances, given that there was agreement between both parties that the judge had erred in law, I set aside the decision of the original judge.

Notice of Decision

9. The decision of the First-tier Tribunal involved the making of an error on a point of law such that it falls to be set aside (see Section 12(1) of TCEA 2007). I set aside the decision of the original judge. I re-make the decision as follows. This appeal is remitted back to the First-tier Tribunal to be determined by a judge other than Judge A J Parker, pursuant to Practice Statement 7.2(b).
10. No anonymity direction is made.
11. This appeal is allowed.

Signed

Date

Deputy Upper Tribunal Judge Juss

25th April 2019