



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11763/2017

THE IMMIGRATION ACTS

Heard at Field House
On 7th December 2018

Decision and Reasons Promulgated
On 15th January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

MR. S O
ANONYMITY DIRECTION MADE

Respondent

Representation:

For the appellant: Ms Z Kiss, Senior Home Office Presenting Officer

For the respondent: Mr R Toal, Counsel, instructed by Wilson Solicitors

DECISION AND REASONS

Introduction

1. It is the Secretary of State who is the appellant in these proceedings. For convenience I will refer to the parties hereinafter as they were in the First-tier Tribunal.
2. The appellant is a Turkish national of Kurdish ethnicity, born in [~] 1989. He came to the United Kingdom as a child with his family. His

father's claim for protection was refused. The family were subsequently granted exceptional leave to remain.

3. The appellant is a foreign criminal who was deported in December 2013. He has a number of convictions, including conspiracy to commit burglaries for which he received 18 months imprisonment.
4. He returned to the United Kingdom illegally and made a claim for protection in May 2017 on the basis of actual or imputed political opinions. He claimed he was at risk from the Turkish authorities. This was because of his association with his father who he claimed had been a member of the PKK, as well as his own involvement with the Turkish People's Democratic party.
5. He claimed to have been targeted by the authorities and arrested on arrival. He said he joined the Turkish People's Democratic party on his return. He said he had been involved with the Turkish community centre in London. He claimed to have taken part in a number of events. As a consequence he said he was detained on a number of occasions by the authorities, abused and then released a short time later. He said that in September 2016 he was taken into a car by plainclothes police officers and released when he agreed to act as an informer. He then decided to leave Turkey
6. A further aspect of his claim was an objection to undergoing compulsory military service. This had been rejected as a basis for claiming by the respondent and the First-tier judge.

The refusal

7. His claim was refused on 3 November 2017. The respondent did not accept he was of interest to the Turkish authorities. His nationality and ethnicity were accepted. When his claim for protection was being assessed he was asked questions about the Turkish People's Democratic party and from his answers he was able to demonstrate a basic level of knowledge about the party. He had not claimed any specific role. He claimed to have attended a protest in 2014 marking the anniversary of the arrest of Mr Abdullah Ocalan, the founding member of the Kurdistan workers party. Country information confirmed protests were held in February on the anniversary across southern Turkey. He claimed that he had been arrested for unfurling banners and was then released without charge.
8. The respondent accepted he may have been a low-level supporter of the party but did not have any profile. His claimed difficulties were not consistent with the low-level involvement described and the country information which indicated ordinary members were generally not targeted.

9. He could not give any details about his father's involvement with the PKK. Furthermore, his father had returned to Turkey on a number of occasions without difficulty with the appellant claiming he had been granted an amnesty.

The First tier Tribunal

10. His appeal was heard by First-tier Tribunal Judge R Chowdhury who, in a decision promulgated on 24 August 2018, allowed the appeal on protection grounds. The appellant was represented then, as he is now, by Mr Toal.
11. At paragraph 16, under the heading: 'The respondent's decision' the judge records that the refusal letter does not dispute his political activities in Turkey, including his support for the Turkish Democratic Party. It was also stated that the respondent had accepted he took part in demonstrations and that his claims of being arrested had not been explicitly disputed. His account of being released however undermined his claim to be of interest to the authorities. Furthermore, at paragraph 18 the judge queried why the appellant would be of interest to the Turkish authorities because of his father when he had been granted an amnesty and had returned to Turkey on a number of occasions without difficulty.
12. Under the heading 'Findings and conclusions' the judge refers to an expert report submitted on behalf of the appellant which refers to the grant of an amnesty in 2003-2005 to certain PKK supporters. At paragraph 35 the judge commented:

"... The significance of the appellant's father's profile is the context in which the appellant's own activities should be assessed and I find does place him at higher risk."
13. The judge then refers to the expert report as indicating involvement with the Turkish Democratic party is seen by the Turkish State as support for the PKK. At paragraph 37 the judge comments about the claimed threats made by the authorities and states that his father's history would colour the authorities perception of him.

The Upper Tribunal

14. Permission to appeal was granted on the basis it was arguable the judge misunderstood the refusal letter and the limited nature of what was being accepted by the respondent. It was contended the judge was wrong at paragraph 16 of the decision in suggesting the respondent accepted he took part in demonstrations.
15. The appellant's credibility was in issue and the respondent was only accepting that at most he may have been a low-level supporter and not an activist. Paragraph 49 the refusal letter questioned his

claim of being arrested on arrival and subsequently. Paragraph 52 records that his account of being detained and then released without charge undermined his claim of being of interest to the authorities and damaged his credibility.

16. It was pointed out that the respondent had not accepted his father was involved with the PKK as evidenced by the refusal of his claim for protection. It was pointed out in the refusal that the appellant could not explain in any detail his father's claimed role and his ability to return to Turkey on number of occasions without problem.
17. Furthermore, the judge refers to a statement from the appellant's wife of the police repeatedly visiting and questioning her about him. However, the judge failed to explain why she was apparently considered believable when, as the appellant's wife she was not wholly independent.
18. At hearing, the presenting officer referred me para 16 of the decision. If this was compared with the reasons for refusal letter the presenting officer submitted the judge was simply wrong in believing the respondent accepted the appellant's claim of participating in demonstrations and being arrested. The judge records that the appellant was subjected to extensive cross-examination but the effect of this is not recorded. There was no reference to the challenge to the appellant's credibility by the respondent. I was referred paragraph 37 of the refusal letter which said the appellant may have been a low-level supporter of the Turkish Democratic party. The refusal letter was not even accepting he positively was a low-level supporter. She pointed out that the appellant's father had never been granted refugee status.
19. Mr Toal, in response, contended that there was no misunderstanding by the judge of what was being accepted by the respondent. I was referred to the summary at paragraph 55 of the refusal letter where the respondent accepted his political activities. I was referred to aspects of his substantive interview, notably, paragraph 34, where he said he was a member of the Turkish Democratic party but was not active and that he joined demonstrations, protests and meetings. At question 15 he said whenever he had a chance he would go to meetings and at question 54 he referred to being arrested. I was referred to the medical report which said the appellant was suffering from post-traumatic stress disorder and this was referred to by the judge as explaining an inability to give a clear account. He pointed out that paragraph 19 of the decision confirms the judge was aware his father had not been granted refugee status and had been able to return to Turkey. However, his father had the protection of British citizenship and there was mention of the amnesty.

20. Mr Toal stated that the presenting officer at hearing and in submissions had not disputed the appellant's account of participating in demonstrations or of being arrested. I was referred to the country expert evidence about low-level supporters being detained. I was taken to specific aspects of the report.

Consideration.

21. The appellant's credibility was central. If the refusal letter is considered then the decision maker had regard to the substantive interview and concluded that at most the appellant may have been a supporter of the Turkish Democratic party. Notably, the reference was that he 'may have been' rather than he was. Paragraphs 49 to 54 of the refusal indicate a rejection of his claim that he was wanted by the authorities. His claim had been of repeated short-term detentions culminating in him being threatened if it did not act as an informer. The respondent was not accepting these facts. The respondent recorded that demonstrations did take part in Turkey when the appellant said he was present. This was not acceptance of any involvement by him however. It is in this context that the summary at paragraph 55 has to be read. It is clearly not a global acceptance of the appellant's claim.
22. The decision refers to a lengthy cross-examination but the content is not recorded. It was common case that his father had not been granted refugee status and had been able to return to Turkey without difficulty. Judge was influenced by the expert report and took the view that his father's history would have coloured how he was perceived by the authorities. However, this overlooks the fact that his father's claimed involvement had not been accepted.
23. It is my conclusion that the judge has misunderstood the refusal letter and what the respondent was accepting. It is clear from paragraphs 36 to 37 and 49 to 54 that his account was being challenged and at the very most he may have been a passive supporter. The judge appears to take the summary at paragraph 55 as meaning the appellant's claim was accepted which is not the case. Consequently, judge was wrong at paragraph 16 to state is claimed activities were accepted. In doing so the judge materially errs in law and the decision cannot stand.

Decision

The decision of First-tier Tribunal Judge Chowdhury materially errs in law and is set aside. The matter is remitted for a de novo hearing in the First-tier Tribunal.

Francis J Farrelly
Deputy Upper Tribunal Judge

27 December 2018

Directions.

1. Re list for a de novo hearing in the First-tier Tribunal at Taylor house excluding First-tier Tribunal Judge R Chowdry.
2. The rejection of the appellant's claim in relation to military service is not been challenged. Consequently, that finding shall stand.
3. For the removal of doubt the appellant's credibility is an issue and the respondent has rejected his claim of events in Turkey. The appeal should be prepared by his representatives on this basis.
4. The appellant's representative should advise if a Turkish interpreter is required.
5. Updated appeal bundle should be prepared. The appellant's representative should advise the respondent if any article 8 claim as being pursued
6. The hearing should last around 2 hours.

Francis J Farrelly
Deputy Upper Tribunal Judge