



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

Appeal Number: PA/12847/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 20 February 2019**

**Decision &
Promulgated
On 1 April 2019**

Reasons

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

**MD
(Anonymity Order Made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Degirmenci of Counsel

For the Respondent: Ms Cunha, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Turkey born in 1986. He appealed against a decision of the respondent made on 17 November 2017 to refuse his claim for asylum.
2. The basis of his claim is that he is of Kurdish ethnicity and of Alevi faith who from 2010 had supported the Peace and Democracy Party which in

2014 became the People's Democratic Party (HDP). He was not a member but attended marches, meetings and celebrations. He was detained 13 or 14 times between 2011 and 2016 and was suspected of involvement with the Kurdistan Workers Party (PKK). He was tortured during detentions but not charged or brought before a court. He left Turkey in early 2017. Some months later he learned that a warrant had been issued for his arrest.

3. The basis of the refusal was that while it was accepted he was a Kurd and of Alevi faith, it was not believed he had been involved with HDP or that he had been detained. His answers had been vague, inconsistent and lacking in detail. He would not be at risk on return simply as a Kurd or Alevi.
4. He appealed.

First tier hearing

5. Following a hearing at Harmondsworth on 26 September 2018 Judge of the First-tier Tribunal Housego dismissed the appeal.
6. His findings are at paragraph [56]ff. In summary, he found [56] that the appellant was *"a low level supporter of the HDP, sometimes demonstrated and was sometimes picked up at demonstrations, with others, held for a while and released without charge..."* Further, at [70] he stated: *"It is reasonably likely that a Kurdish Alevi would be a supporter of the HDP, would demonstrate and be arrested as a result, held for a while and released without charge as part of state sponsored discouragement of an opposition party. That is all that has happened to the appellant. It is not persecution such as to need international protection."*
7. He sought permission to appeal which was refused but granted on 18 January 2019 on reapplication to the Upper Tribunal.

Error of law hearing

8. At the error of law hearing before me Ms Cunha agreed with Ms Degirmenci that the decision was materially flawed such that it must be heard again.
9. First, the judge failed to make findings on a key aspect of his claim. Although the judge accepted that the appellant had been detained numerous times he made no finding on his claim (Q27, 154, 162) to have been tortured during the detentions. Under paragraph 339K of the Immigration Rules, past ill treatment is an indicator of future harm.
10. Further, the judge failed to conduct a structured assessment of risk on return. In that regard there is no indication he addressed his mind to the country guidance in ***IK_(Returnees - Records - IFA Turkey) CG 2004 UKIAT 312***, which confirmed the risk factors set out in the previous

guidance of **IA (Turkey) [2003] UKAIT 34** (particularly at [46(e)] and [47]). In particular, that he would be returning identifiable as a failed asylum seeker; that he is likely to be transferred to the airport police station; that he is likely to be subjected to lengthy interrogation; that he is likely to be asked why he claimed asylum, about his profile, family and political and religious background and beliefs; and that given his answers, he being not expected to lie, further investigations are likely to be carried out into his background, including inquiry of the authorities in his local area. Also, that neither a short duration of detention or release without charge are indicative of the interest which the authorities have in a person.

11. In addition, the judge failed to ask himself, based on the findings made, whether the appellant would be likely to come to the adverse attention of the authorities in the context of the political developments following the failed coup in 2016. Association with HDP had to be considered in light of the respondent's Country Policy and Information Note: Kurdish political parties, Turkey, August 2018 which was before him and which states at 2.4.2:-

"Since peace talks with the PKK broke down in mid-2015, the government has used a broad definition of terrorism to prosecute some HDP MP's and supporters for being members of, or aiding, the PKK."

12. In light of the failure to make adequate findings and to consider the risk on return it was agreed that the case must be reheard.

Decision

13. The decision of the First-tier Tribunal shows material error of law. It is set aside. The nature of the case is such that it is appropriate under section 12(2) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2 to remit to the First-tier Tribunal for a fresh hearing on all issues. No findings stand. The member(s) of the First-tier Tribunal chosen to consider the case are not to include Judge Housego.

An anonymity order is made. Unless and until a tribunal or court directs otherwise the appellant is granted anonymity. Failure to comply with this order could lead to contempt of court proceedings.

Signed

Date

Upper Tribunal Judge Conway

28 March 2019