



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10105/2019

THE IMMIGRATION ACTS

Heard at Manchester CJC
On 28 August 2020 via Skype

Decision Promulgated
On 5 October 2020

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MEK
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Nnamani instructed by Howe & Co Solicitors

For the Respondent: Mr Jarvis Senior Home Officer Presenting Officer

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Trent ('the Judge') promulgated on 25 November 2019 in which the Judge dismissed the appellants appeal on protection and human rights grounds. Permission to appeal was granted on a renewed application by a judge of the Upper Tribunal who found it was arguable for the reasons advanced in the

grounds seeking permission to appeal that the Judge did not approach the evidence holistically or properly assess the risk on return.

Background

2. The appellant is a citizen of Turkey born on 8 May 1994 who arrived in the UK lawfully on 4 May 2019 on a short-term student visa issued on 17 April 2019, having flown directly from Istanbul to Stansted Airport using his own passport.
3. The appellant claimed asylum on 4 June 2019 asserting he faced a real risk on return to Turkey of being persecuted as he was (a) a supporter or member of the Gülen movement (b) had been expelled from the Turkish Military Academy on 31 July 2016 pursuant to Emergency Decree 669 as a result of his Gülenist affiliations (c) came to the attention of the authorities again when on 6 May 2019 someone from the Military Academy under torture identified him as a Gülenist and (d) the authorities raided his house in Turkey on 11 June 2019 accusing him of being a member of the Gülen movement and he is now the subject of an arrest warrant in Turkey.
4. This is a detailed determination in which the Judge, having assessed both the documentary and oral evidence, sets out a summary of such evidence in relation to the question of whether the appellant is perceived as being involved by the Turkish state with the Gülen movement at 24 (a)-(i).
5. The Judge set out the core findings of fact at 25 (a)-(i) in the following terms:
 - (a) During his time in Turkey, the Appellant attended weekly meetings of the Gülenist movement and read Gülenist books, giving weekly reports as to his activities. While at school, he spent time living in Gülenist accommodation. He had no formal role in the Gülenist movement.
 - (b) The Appellant attended the Turkish Military Academy until it was closed pursuant to Emergency Decree 669. He was not expelled from the Military Academy by reason of being perceived to be a Gülenist. Rather, he transferred to Gazi University pursuant to Article 105 of the Decree one the Military Academy was closed. The Appellant was not a Lieutenant in the Turkish military. It follows that there is no link between the Appellants involvement with the military in Turkey and his claim to be perceived by the Turkish state as a Gülenist as a result of which the risk he claims to face is not exasperated by his previous military involvement.
 - (c) After the coup attempt in July 2016, the Appellant began working as an accountant for a company called Emin Yeminli Mali Musavirlik. He got this job through a connexion with the Gülenist movement, but the company was not a Gülenist organisation.
 - (d) The Appellant did not leave Turkey and fly to the UK in fear of persecution.
 - (e) The Appellant's name has not been given to the Turkish authorities as being a Gülenist, whether on 6 May 2019 or at all.
 - (f) The Turkish authorities are not carrying out any investigation into the appellant's involvement with the Gülenist movement, whether as referred to in the solicitor's letter of 22 October 2019 or at all.

- (g) The Appellant's father is not perceived by the Turkish authorities as being a Gülenist, and the appellant has not come under suspicion of being a Gülenist by affiliation with his father.
- (h) It follows from the findings above, taking into account my finding as to his credibility, that the Appellants house in Turkey was not raided by the Turkish authorities, and there is no warrant for his arrest in Turkey.
- (i) The appellant is not come to the attention of the Turkish authorities is being a Gülenist, and the Turkish authorities do not perceive him as such.

Error of law

6. Ms Nnamani in her grounds seeking permission to appeal asserted the Judge had made a misdirection as to the risk on return in failing to adequately consider any such risk in the context of a returnee whose name had been given to the authorities following torture , the appellants background as a Military Academy attendee, and his overall association with the Gülen movement. It was submitted the Judge misconstrued the evidence relating to the appellants ability to leave Turkey legally and his father's arrest and failed to adequately consider the content of the summons which it was submitted supports the appellants case. The Judge is said to have failed to consider the situation in Turkey in August 2018 for a Gülenist. The appellant specifically asserts the Judge failed to adequately consider "the reliable evidence that the authorities had taken recent interest in the appellant despite his departure from Turkey (legally)". It is claimed the Judge erred in rejecting that evidence and dealt inadequately with evidence which showed the appellant was wanted by the authorities and erred in his approach to the Turkish solicitor's letter when stating the letter was not genuine. The appellant asserts it was not open to the Judge to determine genuineness or forgery or that the content of the letter was untrue. The grounds submit that given the Judges positive findings on the appellant, the background material, and potential profile, his conclusion there was no risk resulted from a misdirection and failure to adequately assess the country reports.
7. It is important to specifically consider the details relevant to this appeal. It was not in dispute that following the coup attempt in Turkey in 2016 those perceived to be supporters of the Gülenist movement did at that time face a real risk of being detained by the authorities although it is also clear from the recent country material that a considerable number of those initially arrested have been released without charge. It is accepted there is evidence of further interest in Gülenist since August 2016 as there is reference to investigation and action by the authorities in Turkey against those perceived to be supporters of the Gülenist movement continuing at sporadic intervals, including reference to more recent action and detentions. Considering the extend of the Gülenist movement within Turkish society, clearly recorded in the country material as being extensive, it is understandable that it will take time to investigate all those potentially of concern to the government. It is accepted that a substantial number of those in the Turkish military suspected of being Gülenist were

- dismissed from their posts and some detained and subject to ongoing proceedings.
8. The appellant suggests that as a result of his attending the Turkish Military Academy he may somehow be viewed with similar suspicion to those who were detained as a result of their military connexions. In his asylum interview at question 1.14, when asked his occupation in his home country, he claimed he was a student in the Military Academy; but that interview took place on 4 June 2019 when that response was clearly untrue.
 9. The appellant applied in his own name to UK Visas and Immigration on the 8 April 2019 for a short-term student visa to enable him to undertake an intensive English language course in the United Kingdom between 4 May 2019 and 27 July 2019. The Entry Clearance Officer (ECO) noted the appellant claimed to have worked as a financial adviser since 1 June 2018 at the company named above, whilst at the same time preparing for the examination of Certified Financial Advisors set by the Turkish government, for which he was required to provide evidence of a certain level of English to enable him to obtain an international tax adviser and certified public finance advisor licence. It was for this purpose the appellant stated he wished to study on an intensive English language course in the UK. The appellant was asked on the application form about details of his employment to which he confirmed he was a financial specialist who had undertaken a compulsory internship at the company between November 2017 and April 2018. The ECO undertook the normal inquiries into such an application and contacted the company who confirmed that the appellant was employed by them in the capacity claimed, leading to it being concluded that such employment was credible.
 10. The appellant was also asked in the application form to set out details about work he had done for a number of specified types of organisations one of which was the armed forces, including compulsory national military service, to which the appellant stated had not worked in any of the jobs listed. The appellant also stated his intention to return to Turkey when he had completed his English language course. There is credible evidence based upon enquiries made, as recorded in the application details contained within the respondents bundle, that the appellants employment had been verified as genuine, that he had the intention to study in the United Kingdom, and return to Turkey thereafter. The company confirmed the appellant had been granted leave to enable him to come to the United Kingdom to improve his English language and that the company were paying his expenses for such purpose.
 11. It is also important to consider the purpose of the Turkish Military Academy whose stated aim is to educate and train the Corps of Cadets, offering courses to those who study not all of whom are likely to be active serving members of the Turkish armed forces. This is not an organisation with the same structure as Sandhurst or Catterick which are set up for the sole purposes of training applicants for active military service in the British Army.
 12. The chronology shows the appellant obtained the diploma referred to by the Judge in 2016 having undertaken a four-year course in Business Management,

issued by the Gazi University. The appellant must have commenced his studies in 2012 and concluded them in 2016 when he would have been 22 years of age.

13. Ms Nnamani was asked about the appellant's national service as there is no detailed reference to this in his statements and ordinarily military service is required between the ages of 20 and 41 but if a person has a degree or qualification this can be deferred until they have completed their studies for which a reduced time has to be served, but she was unable to assist in this point.
14. Despite the Turkish government declaring the Gülenist movement to be an illegal terrorist organisation in May 2016, the Supreme Court ruling it was an armed terrorist organisation in a later ruling, the attempted coup on 15 July 2016, and the imposition of a state of emergency four days later, there is no evidence the appellant was arrested or detained at any time during that period or thereafter during his time in Turkey. The appellant was also able to complete his studies at the Gazi University indicating a lack of interest in him by the authorities. This is the finding of the Judge which has not been shown to be outside the range of those available to him. Rather than being detained the appellant was transferred to another educational institution to enable him to complete his studies. The Judge specifically notes at 24(a):

“(a) In light of the Appellants inconsistent evidence to which I have already referred as to his claimed expulsion from the Military Academy, or alternatively the military, I find (applying the lower standard of proof) that he was not expelled from the Military Academy in July 2016. Rather, bearing in mind Article 104-5 of the Decree and the Appellants diploma certificate, I find that the Military Academy was closed pursuant to the decree and that the appellant was transferred to Gazi University to complete his diploma. In light of the Appellant's name not appearing on the list of dismissed military personnel, I also find that the Appellant was not a Lieutenant in the military at the time of Emergency Decree 699. In light of those findings, it follows that the Appellant had not come to detention of the Turkish or authorities as a Gülenist at the time of Emergency Decree 699 on 31 July 2016. It also follows that there is no link between his involvement with the military in Turkey and his claim to be perceived by the Turkish state as a Gülenist, as a result of which the risk he claims to face is not exasperated by his previous military involvement.”

15. I find the appellant has failed to establish any legal error material to this aspect of the decision. The Judge's findings have not been shown not to be within the range of those reasonably open to the Judge on the evidence.
16. The Judge also finds that when the appellant left Turkey he was able to travel through a recognised International Airport on his own passport using a visa issued to him in his own name and encountering no problems on departure. The Judge is criticised by Ms Nnamani for such a finding; attempting to argue before the Upper Tribunal that the appellant fled before there was any adverse interest in him by the Turkish authorities and when there were therefore no 'stop notices' or anything at the airport that would have prevented his departure.

17. In relation to this claim it is important to look again at the UK Visa and Immigration application form in which the appellant was asked about his passport details. He confirmed the issuing authority was the Turkish Passport Service and that the passport was issued to him on 6 November 2018. I find no arguable merit in the submission by Ms Nnamani there may have been a different body responsible for issuing passports to those suspending existing passports, as clearly there is one recognised passport agency in Turkey who would act to do the governments bidding in terms of the issue or suspension of passports relating to Turkish Nationals being suspected of being Gülenist with the requisite profile.
18. Ms Nnamani's submission that on 6 November 2018 when the appellant left Turkey there was no evidence of adverse interest in him such as to warrant action being taken is undermined by a document submitted pursuant to paragraph 15(2A) of the Procedure Rules, which was not before the Judge, recording the date of issue of the passport and recording that on 13 March 2018 the appellant was subject to proceedings being commenced in the "Heavy Criminal Court" in relation to his illegal membership of a Gülenist organisation which, as noted above, had been declared by the authorities to be an illegal terrorist organisation in May 2016 and ruled to be an armed terrorist organisation by the Supreme Court shortly thereafter. The appellant claims it was as a result of suspected membership of this organisation that he faced a real risk and if, as he now claims, he was suspected and the subject of criminal proceedings as a result in early 2018 it completely undermines his claim that he was issued with a passport in November 2018 and was able to leave the country using that passport without experience any difficulties because there was no interest in him.
19. The appellant provided a letter from a solicitor in Turkey in support of his evidence which was considered by the Judge who sets out findings at 24(i) of the decision under challenge in the following terms:
 - "(i) The Appellant said in oral evidence that there is a warrant for his arrest in Turkey. No such warrant, nor any evidence of its existence, has been produced. The Appellant claims that he has tried to access the warrant via his solicitor, but the file is secret, and the solicitor cannot obtain the evidence. In support of this, the Appellant has submitted a letter dated 22 October 2019 from a solicitor in Ankara who claims to have obtained information from the Ankara Chief Public Prosecution Office that an investigation has been opened against the appellant under Turkish Penal Code 314/2, case number 2018/ 126312, accusing him of being a member of FETO/PDY Armed Terrorist Organisation (a term standing for Fethullah Gülen Terrorist Organization, an umbrella term used by the Turkish government since the coup attempt for persons of suspected of being Gülenist: CPIN para 6.10.1). Importantly, there is no suggestion in the solicitor's letter that any arrest warrant has been issued, and no documents have been provided to support the assertions made in the letter. The letter states in this regard that the investigation is confidential and that *"it is not possible to obtain relevant information and document[sic] regarding the*

investigation". However, no explanation is given as to how, if the investigation is indeed confidential, the solicitor was able to find out that such an investigation is ongoing, what is being investigated and even the case number, but is nevertheless unable to obtain any other information or documents, including any information as to whether a warrant has been issued for the appellant's arrest. Finally, although the appellant claims that the letter was sent to him by email, there is no evidence of it being sent to him in that manner, and no reliable evidence as to its provenance. In light of my findings as to the appellants credibility, and applying **Tanveer Ahmed**, I find that the letter is either not genuine or that its content, including the statement that there is an ongoing investigation into the Appellant for being a Gülenist, is untrue. In any event, the letter says nothing to support the appellants claim to be subject of an arrest warrant."

20. The Judge clearly considered the letter together with all the other evidence made available by the appellant cumulatively, including the adverse credibility finding at [22] in which it was found *"It is readily apparent from the evidence above that the Appellant is prepared not to tell the truth when he considers it will assist his case. Although some of the matters described above are not fundamental to his account of the risk he claims to face on return to Turkey, taken together they nevertheless materially undermine his general credibility and required the tribunal to treat the remainder of his evidence with caution "*. The Judge sets out the reasons for such a finding at [21] of the decision under challenge. These are findings clearly within the range of those reasonably open to the Judge on the evidence.
21. This is not a case in which the respondent asserted the document was forged, in which case the burden would have fallen upon the respondent to establish this fact, but of the Judge having assessed the content of the letter against the evidence concluding that little weight could be placed upon it. That is a finding within the range of those reasonably open to the Judge when the evidence is considered in the round.
22. Mr Jarvis in his oral submissions argued that the three points relied upon by Ms Nnamani did not match those on which permission had been granted, but that he was not prejudiced in dealing with the same and argued they too did not establish arguable material error.
23. I find it is not made out that when assessing the evidence there is any thing to support a finding there was an artificial separation in the Judges thinking or structure sufficient to amount to a material error of law.
24. The Judge makes clear findings as to a risk on return noting that as a result of the appellants failure to establish that his claim is credible or that he has any adverse profile of interest to the Turkish authorities that he will face any real risk on return to Turkey of serious harm or alleged ill treatment, sufficient to warrant a grant of international protection. Whilst the appellant may not like that conclusion and seek a more favourable outcome that does not establish arguable legal error, per se.
25. The Judge was entitled to note that for three years after the coup the appellant experienced no difficulties in Turkey, was issued with a passport, and able to leave Turkey using that passport without difficulties. The Judge clearly considered the alleged summons in detail setting out at 24(e):

“The Appellant claims that his father is currently subject of a court case as a result of the authorities’ suspicion that he is involved in the Gülenist movement, with which the Appellant says his father is indeed involved. The summons documents produced by the appellant make no reference to the basis of the court case against the appellant’s father. In fact, it appears from those documents that the appellant’s father has not been arrested and there is no warrant for his arrest: the summonses states that he will be arrested if he does not appear on certain dates to give a statement. The Appellant’s claimed fear that he will be arrested immediately if he returns to Turkey is not consistent with the evidence in respect of his father’s position.”

26. The Judge also notes there is no evidence other than the appellants own word that he is a Gülenist. In light of the adverse credibility findings the Judge was entitled to treat such evidence with caution.
27. In her reply Ms Nnamani referred to the CIPU at paragraph 5.3 regarding the cancellation of passports in which it is recorded that those abroad suspected of supporting the Gülenist movement may have their passports cancelled rendering them either stateless or requiring their attendance at the Turkish High Commission to obtain a temporary one-way passport to enable them to re-enter Turkey. The authorities view is that they will then be able to appear before a court and if it is established they are not Gülenist their passport returned to them. The country information records 140,000 people having had their passports cancelled preventing them leaving Turkey but if those suspected of being Gülenist have had their travel documents cancelled this undermines the appellant’s claim as he was not only issued with a passport but also able to leave Turkey without difficulties at the airport.
28. Whilst the appellant relies upon a report from the London Academy Organisation, a body which has analysed aspects of the Secretary of State's cases when dealing with Gülenist, such a generic report does not undermine the specific conclusions reached by the Judge having had the benefit of seeing and hearing the oral evidence.
29. The appellant also sought to rely upon a second document that was not before the Judge, under paragraph 15(2A), purportedly cancelling his passport and an order of December 2019 that he must not leave Turkey. It is not clear why such an order would be made when it is the appellants case his father told the police he had already left Turkey and they will have a record of this fact as a result of his having passed through the International Airport. The appellant claimed this evidence was given to the police in 2019. The order cancelling the passport also seems to be itself questionable as it states the passport was not cancelled until 20 August 2020 despite an earlier order that the appellant should not leave the country made in December 2019 when, logically, the matters would coincide. It is also noted the cancellation order indicates it is only valid for one month from 20 August 2020 to 20 September 2020 which does not appear to be in accordance with the country information regarding the cancellation of passports of those suspected being members of the Gülenist movement.
30. In summary, this is a carefully considered and written decision in which the Judge clearly had in mind the whole of the available evidence relied upon by the

appellant and the Secretary of State. The Judge sets out findings of fact which are supported by adequate reasons. Whilst the appellant disagrees the grounds fail to establish arguable legal error material to the decision to dismiss the appeal sufficient to warrant the Upper Tribunal interfering any further in this matter.

Decision

- 31. **There is no material error of law in the Immigration Judge’s decision. The determination shall stand.**

Anonymity.

- 32. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 3 September 2020