



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: PA/09313/2019 (V)

THE IMMIGRATION ACTS

**Heard at Field House via Skype for
Business
On Tuesday 2 February 2021**

**Decision & Reasons
Promulgated
On Tuesday 23 February
2021**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

**E A
[ANONYMITY DIRECTION MADE]**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity order was made by the First-tier Tribunal. This is an appeal on protection grounds. It is therefore appropriate to continue that order. 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, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

Representation:

For the Appellant: Mr B Hawkins, Counsel instructed by Arlington Crown solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer.

DECISION AND REASONS

BACKGROUND

1. The Appellant appeals against the decision of the First-tier Tribunal Judge Shore promulgated on 7 April 2020 (“the Decision”). By the Decision, the Judge dismissed the Appellant’s appeal against the Respondent’s decision dated 14 September 2019 refusing his protection and human rights claims.
2. The Appellant is a national of Turkey. He came to the UK on 28 July 2018, having been granted entry clearance as a short-term student. He claimed asylum on 14 September 2018.
3. The Appellant claims to be at risk from the Turkish authorities following the failed coup in July 2016. The Appellant was a military cadet at that time. He says that he and his fellow cadets were arrested by the authorities and detained for six days as the person in charge of the group was suspected of having been involved in the coup. The Appellant’s military academy having been closed by the authorities (as were all others), the Appellant returned to his family home in Istanbul and pursued his university course for two years. He says that during that time, he expressed views against the Turkish President in conversation with family and friends. The Appellant claims that warrants have been issued against him on suspicion of being a member of a terrorist organisation. The Appellant also claims that warrants have been issued against his brother for the same reasons. His brother is in France and has claimed asylum there. The Appellant also says that the Turkish authorities have begun to arrest former military cadets including those with whom he served in July 2016.
4. The Judge did not accept the claim as credible for reasons set out at [86] to [107] of the Decision.
5. The Appellant appeals on nine grounds as follows:
 - (1) The Judge has unreasonably rejected the Appellant’s evidence as to why he did not claim asylum immediately on arrival ([88] to [89] and [94] to [95] of the Decision).
 - (2) Paragraph [90] of the Decision concerning the Appellant’s journey to the UK is difficult to follow.
 - (3) The Judge has unfairly dealt with the issue of differences between the answers given at the screening interview and at the substantive

asylum interview and has failed to take into account the Appellant's explanation in that regard ([91] to [93] of the Decision).

(4) The Judge's comments about the Appellant's evidence at interview, in his statements and at the hearing are broad generalisations and lack examples ([96] of the Decision).

(5) It was not open to the Judge to find as he did at [97] to [98] of the Decision that the evidence about the Appellant's brother's claim lacked plausibility, particularly in light of the documentary evidence.

(6) The finding regarding the evidence from the Appellant's lawyer in Turkey at [99] of the Decision was a concern not raised with the Appellant at the hearing and was therefore unfair; in any event the reasoning is inadequate.

(7) The Judge's finding at [100] of the Decision regarding the authenticity of screenshots of the documentary evidence held on the Turkish computer system ("UYAP") was not open to him on the evidence regarding that system.

(8) It was not open to the Judge to reject the probative value of the expert report in particular regarding the authenticity of the arrest warrant as the Judge has done at [101] of the Decision.

(9) The adverse credibility findings at [102] of the Decision are undermined by the errors identified in the previous grounds.

6. Permission to appeal was refused by First-tier Tribunal Judge Davidge on 28 May 2020 in the following terms so far as relevant:

"... 2. The grounds argue that Judge Shore in a decision promulgated on 7th April 2020 fell into legal error when he gave inadequate reasons for rejecting the Appellant's good explanation for the lateness of his application which was that he did not know that he could claim asylum. There is no arguable merit here. Contrary to the grounds the judge's conclusion that the Appellant could either have claimed asylum on arrival at the airport or shortly thereafter, and failed to do so without reasonable excuse given that he lived amongst the Turkish diaspora and would have had access to relevant information, is not perverse as these grounds maintain.

3. The argument that paragraph 90 is 'hard to fathom' fails to make clear why, or what error arises.

4. The ground that the judge should not have considered adverse the Appellant's failure to mention detention at his screening interview because the Appellant's explanation was that he had been cut off by the Immigration Officer from giving full details of his claim fails to give a fair reading to the judge's decision. As the judge notes the explanation does not explain why he said that some military schools were closed instead of

saying that his military school was closed or why he said that some people were arrested instead of saying that he was arrested, and given he accepts what is recorded as what he said, he plainly had the chance to say both.

5. Further, the grounds add to the evidence, for example, in connection with the position in respect of the brother at 59 and 60 of the judge's decision, providing a later argument to fit the way in which the evidence developed. It was not the Appellant's case that his brother had been released and then re-detained and the speculation that that could explain the position reveals no arguable error in the judge's reasoning. Further, the judge was entitled to find that as the Appellant's brother is safely in France it was adverse that he had failed to provide any witness statement in support of his brother's appeal here.

6. The grounds reveal no arguable error of law."

7. The Appellant renewed his application for permission to appeal on the same grounds and responded also to Judge Davidge's refusal of permission. Permission to appeal was granted by Upper Tribunal Judge Gill on 20 July 2020, in the following terms:

"Ground 7: It is arguable that the reasons given by Judge of the First-tier Tribunal Shore (para 100) for rejecting the documents submitted from UYAP do not withstand scrutiny. It was the appellant's evidence that this was a computerised court proceedings system in Turkey that can be accessed by lawyers (para 64 of the Judge's decision). If the appellant's evidence is correct, it is arguable that the fact that photographs/screenshots were produced supported the appellant's evidence about the UYAP system, as para 19 of the ground contends.

On the other hand, the judge gave several other reasons for drawing adverse credibility inferences from the appellant's evidence. The background material quoted at para 19(b) of the grounds was not before the judge and therefore arguably cannot be relied upon in order to establish that the judge had materially erred in law, the burden being upon the appellant to establish his case to the low standard. It may therefore be said that the judge's assessment of the credibility of the appellant's evidence concerning the UYAP system fell to be decided on the basis of an assessment of his credibility as a whole. On that basis, it may be said that the judge was entitled to reject the appellant's evidence about the UYAP system.

Nevertheless, this ground is at least arguable. If established, it is arguably material.

Ground 4: It is also arguable that the judge erred by failing to explain why he considered that the appellant's evidence was vague, lacking in detail and inconsistent.

Although the other grounds have less merit, I will not limit the terms in which permission is granted."

8. Judge Gill gave directions for a remote hearing in relation to the error of law issue. So it was that the appeal came before me. The hearing was conducted via Skype for Business. The hearing was attended by the representatives as above and by the Appellant and his solicitor. There were no technical issues affecting the hearing generally. I was taken to documents in the Respondent's bundle before the First-tier Tribunal to which I refer below as [RB/xx]. I also had what is described as the Appellant's Supplementary Bundle of Documents which was prepared for the hearing before me and which contains core documents. That is a tabbed bundle and I therefore refer to documents in that bundle as [AB/tab/xx].
9. The Appellant has made an application under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 to adduce fresh evidence. Mr Hawkins explained that the Appellant changed solicitors following the First-tier Tribunal hearing and that the new evidence had been obtained and produced in order to deal with some of Judge Shore's findings. It was accepted that the Judge could not be criticised for not dealing with evidence, which was not before him, but Mr Hawkins indicated that the fresh evidence was of assistance to underscore the points made about the errors in the treatment of the evidence which as before the Judge. Those documents are to be found in the supplementary bundle to which I refer above.
10. Having heard from both representatives, and following a concession made by Ms Everett on behalf of the Respondent, I found an error of law in the Decision. I indicated that I would therefore set aside the Decision and it was agreed that the appeal should be remitted. I indicated that I would set out the reasons for my conclusions in writing which I now turn to do.

DISCUSSION AND CONCLUSIONS

11. The main focus of Mr Hawkins's oral submissions was ground seven. His submissions on that ground also incorporate grounds six and eight.
12. The focus of ground seven is the documents concerning the arrest warrants issued against the Appellant and the UYAP system from which those documents are taken. Those documents appear at [RB/117-126]. The starting point is a letter from a solicitor in Turkey, Talha Aksoy. His letter dated 11 August 2018 ([RB/120]) explains the documents which were obtained as follows:

“... [EA] with the identification number [given] (Republic of Turkey) has applied to us for the purpose of confirming the fact that an arrest decision and an investigation has been opened with the charge of **'being a member of the FETO/PDY Armed Terrorist Organisation'** and in order to prove that the asylum application request has been based on justified reasons.

According to the information and documents (annexed documents) received in the records of the National Judicial Network Programme (UYAP) about [EA] with the identification number [given] (Republic of Turkey) under the accusation of being a member of the FETO/PDY (Fetullah Terror Organisation/ Parallel State Structure) Armed Terrorist Organization, **there are the investigation file of the Public Prosecutor of Kocaeli with the file number [given] and the arrest file of Public Prosecutor of Kocaeli with the file number [given].** Both OHAL (the State of Emergency) and KHK (the Decree Laws) and the confidentiality of the investigation were cited, so it was not possible to obtain documents from the above mentioned files physically.

About [EA] with the identification number [given] (Republic of Turkey), the investigation is ongoing, according article 314/2 the Turkish Penal Code, from 5 years to 10 years imprisonment is foreseen for this crime. The punishment for those convicted of the same article are increased by half percentage, according article 5/1 of the Anti-Terror Law No. 3713. According that [EA] from 7,5 years to 15 years as a result of the trial will be sentenced to imprisonment.

The above information is based on the documents I submitted in the appendix and the investigation I made at the courthouse and I certify the accuracy of this information with my signature.”
[emphasis in the original]

13. The screenshots themselves appear at [RB/122-126]. Given the lawyer’s explanation, I do not need to set out what those documents show.
14. Judge Shore had the lawyer’s letter and screenshots before him. He also had the evidence of the Appellant about these and the other court documents recorded at [64] to [67] of the Decision as follows:

“64. The Appellant had found out about the warrant issued against him around the second week of September 2018. It was when he was attending a language course. There is a system that only solicitors can use called UYAP. His solicitor made a check and found two warrants were issued against him. One was an arrest warrant. One was a detention warrant. After he had submitted the documents to the Home Office, they wanted more documents and then they formally obtained this document from the court where the warrants were issued. The document was a page A61 and the purported original was handed up.

65. Mr Badar asked the Appellant why it had taken him from September 2018 to January 2020 to obtain the original of page A61. He said it was easy to get a screen shot of the arrest and detention warrants, but harder to obtain the original. His solicitor had to go to the court personally. Eventually he obtained it. The Appellant confirmed that the document that had been handed up was the actual document that the solicitor had obtained from the court.

66. The Appellant was asked if there was a covering letter with the original of A61, but said that there were ‘some other documents, but [he] did not recall any of them that described that document’. His solicitor in

the United Kingdom had told him that A61 needed translating and to be sent to an expert to confirm [its authenticity]. That was how it should be sent to the court. The expert has provided a report of genuineness.

67. Mr Badar challenged the authenticity of the document on the basis that it looked like it had been produced on a standard printer and did not look like an official document. The Appellant responded by saying that, in state offices, they have normal printers. The solicitor got it from the court. There is nothing more the Appellant could do to make the Home Office believe him. He had sent screenshots, but these were not enough. He was told by his solicitor that the expert could validate A61 and that is what happened. The Appellant said that he did not know how he could make Mr Badar believe when the expert says it is real.”

15. The document at A61 appears now at [AB/B/24] with a translation on the preceding page. As I understand it, it was not translated as such when submitted to the First-tier Tribunal but was the subject of an expert report verifying it. The translation as now submitted in its material part appears to show that an arrest warrant has been issued against the Appellant for membership of an armed terrorist organisation, which crime is said to date back to 2016. The warrant directs the Appellant’s production to the Public Prosecutor’s Office once he is found. The document is dated 16 July 2018 and said to be signed electronically by the Judge and clerk.
16. The document as it was before Judge Shore was the subject of an expert report of Dr Derya Bayir, a qualified lawyer affiliated to the Istanbul Bar Association. Her report is at pages [63] to [64] of the First-tier Tribunal bundle. The challenge to the Judge’s treatment of that report forms the Appellant’s ground eight. The expert, at [2] of the report, sets out her understanding of her duty to the court. At [3], she sets out her expertise. She says that she is “an acknowledged expert on legal and political issues concerning Turkey”. She works as a consultant for a law firm in Istanbul and is also an academic at the University of London. Her expertise is in “international human rights, minority rights law, and Turkish law and jurisprudence on ethno-religious minorities”. At [4] and [5] of the report, Mr Bayir confirms that she has seen the arrest warrant document and that she has been asked to comment on the authenticity of it. She explains at [6] of the report her methodology which consists of comparing the document to “original documents of similar types”. Her findings about the document appear at [7] to [13] of the report before concluding at [14] of the report that “[i]n light of all these findings, I have concluded that the arrest warrant in question does not contain any irregularities and is compatible with what one would expect in a genuine arrest warrant documentation”. Ms Bayir has written a supplementary report which appears at [AB/B/38-40] to deal with the Judge’s criticisms of her evidence.
17. The Judge dealt with these documents at [99] to [101] as follows:

“99. I find that the letter dated 11 August 2018 from his lawyer in Turkey [R119-R110] [sic] about the documents that were submitted is not credible. I was not taken to any evidence by the Appellant or Mr Knight that sought to corroborate the existence and/or status of the firm (‘ahd’) or the individual lawyer (Talha Aksoy). Such information is readily available. The existence of the lawyer was challenged in the reasons for refusal and errors in the letter were pointed out. The Appellant made no attempt to obtain a statement from his lawyer to clear up the errors. I was not shown the original envelope in which the document from the lawyer was sent. I find it incredible that the lawyer whose letter [R120] says that the Appellant applied to him to confirm that warrants had been issued and then sent the documents to the Appellant’s father, rather than to the Appellant direct.

100. The documents submitted from UYAP were photographs or screenshots, which undermines their authenticity. I also note that the Appellant has not produced a bill from the lawyer. I find that the letter does not describe how the lawyer obtained the documents, just that he did. I find that the principle in TK (Burundi) [2009] EWCA Civ 40 applies to the Appellant’s assertions on the issue of the letter from the lawyer in Turkey and the documents that he purportedly sent and affects his credibility.

101. I can attach little weight to the report of Dr Bayir dated 19 February 2020 [A63-A64]. In AAW (expert evidence - weight) Somalia [2015] UKUT 673 (IAC) it was held that a failure to comply with the Senior President’s Practice Direction may affect the weight to be given to expert evidence. Dr Bayir says she has borne in mind paragraph 10 of the Senior President’s Practice Direction, but has failed to include the prescribed statement of truth. She has failed to properly and fully set out the nature of her expertise insofar as it relates to assessing the validity of the document at page A61 and has not shown her qualification to act as an interpreter. No proper and full interpretation of the document at page A61 was provided, so I find the report to be of little probative value. I find that the Tribunal was not provided [by] with a certified translation of the document at page A61 and I can therefore give it little, if any, weight for the reasons set out above.”

18. Certain of those criticisms are well founded. Mr Hawkins accepted that there was no translation of the arrest warrant document before Judge Shore. Nor was there the evidence now produced about the lawyer’s bona fides. Although Dr Bayir has indeed provided a statement of her duty to the court, she herself accepts in her supplementary report that the original version of her report sent to the solicitor did not contain a statement of truth but that she sent an amended version on the same day. It appears that the (former) solicitors included the wrong version in the bundle.
19. I was also not wholly impressed with the submission regarding Dr Bayir’s relevant expertise. As I observed at the hearing, Dr Bayir’s area of practice is not in criminal law. It may be that as a specialist in international human rights law and dealings with minorities in the judicial system in Turkey, she has acquired some knowledge of the workings of

the criminal law system and familiarity with documents, but her expertise is not as obvious as, say, a criminal law practitioner in this field. That said, as Mr Hawkins pointed out, she has explained in some detail what led her to the conclusion that the document was genuine. She is clearly a person with some authority as a lawyer and, overall, the reasons given by Judge Shore for giving her report little weight are thin.

20. In any event, and as Ms Everett conceded, the Judge's criticisms have to be looked at in the light of the further evidence now available. There is now for example confirmation of the lawyer's standing. There is confirmation from Dr Bayir that she had provided a report which is attested to by a statement of truth. There is now a translation of the arrest warrant. Although, as Ms Everett submitted, and I accept, what is asserted is an error of fact arising from documents which were not before the Judge, errors of fact are capable of amounting to errors of law if the new evidence shows that the Judge has misunderstood material facts arising from the evidence which was before the Judge (see by way of example Haile v Immigration Appeal Tribunal [2001] EWCA Civ 663 and the discussion of the principles in that and other cases in E v Secretary of State for the Home Department [2004] EWCA Civ 49).
21. Independently of the Respondent's concession, I also accept the challenge made in ground seven that Judge Shore's reasons for rejecting the screenshots as corroboratory evidence do not withstand scrutiny. The lawyer's letter coupled with the Appellant's oral evidence explains that the records are held electronically. The lawyer explains that he attended the court house, but was unable to obtain physical documents due to confidentiality restrictions. The Appellant gave some oral evidence about the electronic system for recording warrants. No reason is given why the accessing of documents from a screen which would inevitably lead to evidence in the form of screenshots is undermining of the authenticity of that evidence.
22. As Mr Hawkins submitted and I accept the evidence about the court documents is of particular importance in this case because it is accepted by the Respondent that if the Appellant is indeed of interest to the Turkish authorities for the reasons he gives, he would be at risk on return.
23. Although Mr Hawkins did not abandon reliance on any of the other grounds, I as Judge Gill, do not consider those other grounds to have much if any merit. I do not consider that there is merit in ground four as Judge Gill thought there might be. Although [96] of the Decision does consist of general comments about the Appellant's evidence, those criticisms have to be read in the context of what precedes that paragraph which does provide reasons for rejecting some of the Appellant's evidence and the record of the Appellant's evidence at [38] to [74] of the Decision. However, although there are sustainable adverse credibility findings made by Judge Shore which are not the subject of successful

challenge, I am satisfied that, due to the errors identified and accepted arising from the Appellant's grounds six to eight, it is appropriate to set aside the Decision. Although, as I say, there are adverse credibility findings which are sustainable, those are based on rejection of the potentially corroboratory evidence in the form of the court documents as evidenced by the documents to which I have already made reference. For that reason, if that documentary evidence is accepted, it may well make a difference to the view taken of the credibility of the Appellant's claim. As such, it would not be appropriate to preserve any of the findings made by Judge Shore.

24. For those reasons, I conclude that grounds six to eight disclose errors of law in the Decision and I therefore set the Decision aside in its entirety. The credibility of the protection claim will therefore need to be considered completely afresh. For that reason, I agreed with the representatives that this appeal should be remitted for a de novo hearing.

CONCLUSION

25. For the foregoing reasons, grounds six to eight disclose errors of law in the Decision. It is therefore appropriate to set aside the Decision. I do not preserve any findings. For the reasons given above, it is appropriate to remit the appeal to the First-tier Tribunal for a de novo hearing. Both representatives submitted that this was the appropriate course.

DECISION

I am satisfied that the Decision involves the making of a material error on a point of law. The Decision of First-tier Tribunal Judge Shore promulgated on 7 April 2020 is set aside in its entirety. No findings are preserved. The appeal is remitted to the First-tier Tribunal for re-hearing before a Judge other than Judge Shore.

Signed L K Smith
Upper Tribunal Judge Smith

Dated: 9 February 2021