



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

Appeal Number: PA/50934/2020
UI-2022-000855; IA/01428/2020

THE IMMIGRATION ACTS

**Heard at Field House
On 15 August 2022**

**Decision & Reasons Promulgated
On 14 September 2022**

Before

**UPPER TRIBUNAL JUDGE FRANCES
DEPUTY UPPER TRIBUNAL JUDGE JUSS**

Between

**V B
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K Degirmenci, instructed by Montague Solicitors

For the Respondent: Ms A Ahmed, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Turkey born in 1995. He appeals against the decision of First-tier Tribunal Judge Beg dated 26 October 2021 dismissing his protection claim on asylum, humanitarian protection and human rights grounds.
2. Permission to appeal was granted by Upper Tribunal Judge Perkins on 18 January 2022 on the basis the following grounds were arguable:

- (i) The judge failed to give adequate reasons for finding the appellant was not a credible witness.
- (ii) The judge failed to make findings on the core aspects of the appellant's claim.
- (iii) The judge failed to consider background evidence in assessing the credibility of past detentions.
- (iv) The judge erred in law in requiring corroboration.
- (v) The judge erred in law in her assessment of the appellant's sur place activities.
- (vi) The judge failed to consider all risk factors when assessing risk on return, contrary to country guidance.

The hearing before the First-tier Tribunal

3. It is the appellant's case that he is a supporter of the HDP and he was arrested and detained on three occasions: in 2014 and 2019 when he attended demonstrations and when his home was raided in May 2018. On that occasion he had attended the HDP building to collect donations and party receipts. He claimed to have been interrogated, tortured and charged with being a terrorist belonging to the PKK. After his detention in 2019, he was forced to agree to provide information about HDP involvement with the PKK. He went into hiding and left the UK. The authorities have visited the family home looking for him.
4. The respondent accepted the appellant's role in the HDP including handing out leaflets during elections and attending demonstrations. The appellant had a low level role and was not a member of the HDP. The respondent rejected the appellant's account of past persecution on the basis of inconsistencies in his account. She relied on the CPIN Turkey: Peoples' Democratic Party (HDP) dated March 2020 and concluded the appellant would be of no interest to the authorities.
5. At the hearing before the First-tier Tribunal, the appellant submitted the evidence of unofficial detentions and ill-treatment was consistent with the treatment meted out to those that the government suspected of having links to the PKK. The HDP is viewed as having links to the PKK and the respondent's CPIN confirmed that ordinary members came to the adverse attention of the authorities for participating in demonstrations and rallies.
6. The appellant relied on the Home Office Fact Finding Mission Report dated October 2019 on Turkey: Kurds, the HDP and the PKK ('Fact Finding Mission Report') which stated that anyone speaking out against the government on Kurdish issues could be viewed as supporting the PKK. The report stated that even low level members of the HDP were targeted by the

authorities and low-level activities such as leafleting could put the appellant at risk as a suspected supporter of the PKK.

7. The appellant submitted he was likely to be identified at the airport given his ethnicity and length of absence from Turkey. He joined the Kurdish People's Assembly and had been involved in meetings and demonstrations in the UK. He relied on photographs of him attending meetings and demonstrations and an untranslated article from an online publication: 'Telegraf'.

The judge's findings

8. The judge made the following credibility findings:

“30. The appellant claims that he was arrested and detained on three occasions in Turkey. The first occasion was on 8 October 2014, after he attended a demonstration in Korbani. In cross-examination the appellant said he was detained for a day and was not taken to hospital. He claimed that he had a black eye, a bleeding nose and bruises on his back. He said the demonstration was against Daesh. The appellant provided little evidence about why he was arrested demonstrating against a terrorist organisation.

31. The appellant claims that his second arrest and detention occurred on 24 May 2018 after the police raided his home and found donation receipts and leaflets relating to HDP. The appellant did not know on what information the police came to raid his home. In cross-examination, he said that he was tortured in detention but not taken to a hospital. He said he twisted his foot and had bruises on his face and back. He said he bought some painkillers from a pharmacy.

32. The appellant claims that his third detention took place on 21 August 2019 when he was arrested at a demonstration where there were 200 people. He said following ill-treatment in detention, he suffered a fracture to his skull and a broken tooth after he was punched in the mouth. He said he also suffered an injury to his left leg as a result of a blow and still suffers problems with that leg. In re-examination the appellant was asked about his claim of a fractured skull. He said he did not need to be examined by a doctor and that his skin was cut open after he was hit with a truncheon which has resulted in a scar.

33. I find that there is no medical evidence to support the appellant's claim that he has a scar resulting from being hit on the head with a truncheon. The appellant clearly did not suffer a fractured skull which would have required life-saving hospital treatment. Nor is there any medical evidence with regard to the problems that he has with his left leg.

34. The appellant claims that during his periods of detention he was interrogated about his support for the PKK and the HDP. In cross-examination, the appellant said that he was released by the authorities without charge on condition that he becomes an informer. He also stated that he was made to sign a blank piece of paper and that he

was told that if he did not work as an informer, the paper he signed would be used against him.

35. I find that the appellant had no association with the PKK. I do not find it credible that the authorities would ask him to provide them with information about something that he had no knowledge of or involvement with. At paragraph 9 of his witness statement, he stated that he was accused by the authorities of involvement with the PKK although the police had no evidence to charge him. At paragraph 13, he stated that the authorities suspected the village of helping the PKK but they did not have any evidence that his father was involved with the PKK.

36. At paragraph 12 the appellant stated that his father was a member of the village committee and not a member of the PKK and that he may have said PKK committee in error during the asylum interview. I find that the appellant attempted to suggest in interview that his father was involved with the PKK to justify his claim that the authorities suspected him of supporting the PKK and asking him to become an informer for them. The appellant's witness statement makes it clear that the appellant's father was never involved with the PKK. I do not find the appellant a credible witness.

37. In evidence the appellant confirmed that his father is living at home and is not in the detention. The appellant stated at paragraph 14 of his witness statement that he does not know whether an arrest warrant has been issued against him in Turkey. In (sic) he was asked repeatedly in cross examination whether there is an arrest warrant for him in Turkey. He said that the authorities are looking for him. He said that his family home in Turkey was raided on 4 April 2021 and they asked his father about his whereabouts. I find that there is no corroborative evidence from the appellant's father that the house was raided and that the authorities are looking for him.

38. In his witness statement, the appellant stated that his house was raided on a few occasions and in May 2020 his father and brother were taken to the police station to answer questions about him. I find that there is no witness statement from the appellant's father or brother that they were taken to the police station in May 2020 to answer questions about the appellant. There is no detailed evidence about what sort of questions his family members were asked. By then, the appellant was already in the United Kingdom.

39. At question 77 of the substantive asylum interview, the appellant stated that his brother was arrested at the demonstration in 2015 and is now in France. Yet the appellant later claimed that during his interrogation in 2014, he told the police that his brother was in France. When the inconsistency was put to him, he stated that his brother was in France during the protest. He stated that he was not captured at the protest. He went on to state that his mind is confused.

40. At paragraph 7 of his witness statement, he stated that he was confused when interviewed and when he gave his answers at question 82. He stated that his brother was detained in a demonstration in 2015 and after his release he left the country and went to France. I find that the inconsistency casts doubt upon the appellant's overall credibility. In evidence the appellant said that his brother applied for asylum in

France which has now been granted. There is no documentary evidence before me that the appellant's brother has been granted asylum in France.

41. Ms Panagiotopoulou submitted on the appellant's behalf that there is no requirement for corroborative evidence in asylum appeals. Nonetheless it is reasonable to expect the appellant to have provided some documentary evidence that his brother was granted asylum in France and a statement or letter from him confirming some of the events which took place in Turkey involving the appellant. The appellant also has a relative in the United Kingdom. He said his older sister is married to the relative's brother. His relative did not attend the appeal hearing to provide any additional evidence with regard to the appellant's family background or his knowledge of any political activities that the appellant has been involved in Turkey."

9. In relation to the appellant's sur place activities, the judge found that the appellant could not be seen clearly in some of the photographs and there was no documentary evidence to show the authorities would have become aware of them. In relation to the photograph of the appellant standing next to an HDP member of parliament, the judge found there was no credible evidence that this photograph was uploaded to a platform where it is likely to have been seen by Turkish authorities. In any event, the appellant was one of many who had attended demonstrations and his sur place activities were an attempt to bolster his asylum claim: [45] and [46].
10. The judge found that the appellant's activities in Turkey would not have resulted in the appellant being perceived as a PKK supporter, notwithstanding the evidence in the Fact Finding Mission Report because she did not accept the appellant's account of being detained on three occasions and his claim to have been tortured was not supported by medical evidence: [47].
11. At [48] and [49], the judge found:

"48. I find that if the authorities genuinely believed that the appellant was a supporter of the PKK, he would not have been released after relatively short detentions. He was never charged with any criminal offence nor is there any evidence that there is an arrest warrant issued for him. He was never kept under surveillance or asked to report periodically to the authorities purposes of signing on.

49. Whilst the fact-finding report states that leafleting could attract the adverse attention of the authorities, it is not the appellant's case that he was arrested while he was distributing leaflets. I do not find it credible that the authorities raided the appellant's home where they found leaflets and HDP donation receipts. It is unclear why the appellant would keep donation receipts in his home when he held no official position with the HDP."
12. The judge referred to the risk factors in IK (returns, records, IFA) [2004] UKIAT 312, and concluded that the appellant was not asked to be an informer and there was no record of him as someone who was previously arrested and detained. His sur place activities would not place him at risk

and the appellant accepted the HDP was a legal party. At [55], the judge stated:

“In conclusion I find that whilst the appellant is a low-level supporter of HDP and he has attended some demonstrations and meetings in the United Kingdom with the Kurdish People’s Assembly, I do not find that he is of adverse interest to the Turkish authorities. I find that on return to Turkey his Kurdish ethnicity will be evident from his NUFUS card. However it does not follow that that in itself will result in the appellant being taken to the airport police station for further investigation. Consequently I find that the appellant does not have a well-founded fear of persecution for a Convention reason.”

Appellant’s submissions

13. Ms Degirmenci submitted it was accepted the appellant is Kurdish and is from South East Turkey. He is a supporter of the HDP and has attended demonstrations and distributed leaflets. The background evidence in the appellant’s skeleton argument demonstrated that his activities would be perceived as support for the PKK. The judge therefore erred in law in finding that the appellant would not be of adverse interest to the authorities or at risk on return.
14. Ms Degirmenci submitted that Grounds 1, 2 and 3 could be taken together. The judge either failed to give reasons or failed to make findings or failed to consider evidence in relation to the core parts of the appellant’s claim. She relied on the excerpts from the Fact Finding Mission Report set out in the appellant’s skeleton argument.
15. Ms Degirmenci submitted the judge failed to give reasons for rejecting the appellant’s account of arrest, detention and torture on three occasions. At [30] the judge failed to take into account the appellant’s explanation given in his asylum interview (questions 48 to 52) which was supported by the background material. This was the judge’s only finding in respect of the three detentions and was wholly inadequate. The HDP were perceived to be associated with the PKK which resulted in arrests and intimidation from the authorities. Contrary to the judge’s findings at [35] and [36], the appellant’s evidence of his father’s support for the PKK was consistent. There was no reason to disbelieve the appellant’s account of his three detentions.
16. The appellant never said he was with his brother when he was arrested in 2014. The respondent misunderstood the situation and the judge perpetuated this erroneous interpretation at [39] and [40]. The appellant admitted he was confused when he tried to clarify the situation. He had not changed his story, but in any event this discrepancy was insufficient to undermine the appellant’s credibility.
17. Ms Degirmenci submitted the judge did not consider the appellant’s evidence in the context of the background evidence at [47]. The link

between HDP demonstrations and the PKK was apparent from paragraph 9.3 of the CPIN and the Fact Finding Mission Report. The judge gave no reasons for her finding that she did not accept the appellant's home was raided or why the appellant's account was implausible. If there were any concerns about the appellant's evidence, the judge should have raised them and asked for clarification. The judge's finding that the appellant was not asked to be an informer was undermined by the perceived link with the PKK and the use of intimidatory tactics at 8.7.3 of the CPIN.

18. In relation to ground 4 , Ms Degirmenci submitted there was no real reasons to reject the appellant's credibility and therefore the judge erred in law in requiring corroboration. The appellant's relative in the UK was not called because he could not corroborate the appellant's evidence of events in Turkey.
19. Ms Degirmenci submitted that the appellant's activities in the UK, attending demonstrations, were consistent with his activities in Turkey which were accepted. The finding they were contrived to bolster his asylum claim was perverse. In any event the appellant's motives were irrelevant to risk on return and the judge failed to give adequate consideration to this issue. The appellant could be clearly identified in the photographs which had appeared in an online newspaper. There was evidence at [66] of IK to show that the authorities monitored demonstrations. The judge's findings at [55] were inconsistent with country guidance. The appellant would be questioned at the airport and could not be expected to lie about his activities in the UK. The judge erred in law for the reasons given in grounds 5 and 6. The appellant would be at risk on return even if his account of detentions was rejected on credibility grounds

Respondent's submissions

20. Ms Ahmed relied on the rule 24 response and submitted the decision should be read in its entirety and in context. The judge's finding that the appellant's account of detentions was not credible was open to the judge and she gave adequate reasons for coming to that conclusion. It was clear from the decision why the judge dismissed the appeal. The impugned observation at [30] was not determinative of the appeal. The judge's findings were a mixture of evidence and conclusions and she considered the evidence holistically.
21. Ms Ahmed submitted the judge did not find the appellant's account of detention and torture credible because of the discrepancies and lack of medical evidence. Any failure to consider the appellant's explanation at [30] was not material. The judge's findings overlapped and must be looked at in context. The appellant was a low level supporter which was not enough to put him at risk: 7.11.2 of the Fact Finding Mission Report and 10.9.2 of the CPIN. The appellant was released after short periods of

detention and therefore was not perceived to be a PKK supporter. When read in conjunction with country guidance and the CPIN, [47] to [52] adequately demonstrated why the appellant would not be at risk on return.

22. The judge was entitled to require corroboration given her doubts as to the appellant's credibility. There was no evidence the appellant's brother had been granted asylum in France and his relative in the UK could have given evidence about the family background and political activities notwithstanding the relative's lengthy residence in the UK. It was open to the judge to draw adverse inference from the lack of evidence. There was no error of law as alleged in grounds 1 to 4.
23. Ms Ahmed submitted that grounds 5 and 6 were disagreements with the judge's findings at [45] and [46]. There was no evidence before the judge to show that the appellant had come to the attention of the authorities and the online newspaper article was untranslated. The judge adopted the correct approach and conducted a fact sensitive analysis. She properly directed herself following country guidance and was well aware of the risk factors. There was no real risk to the appellant on return.
24. Ms Degirmenci briefly responded and submitted there was no consideration of why the appellant was arrested and the background material showing that the HDP building was often filmed by the authorities. When read as a whole, the judge's findings were inconsistent with the background evidence.

Conclusions and reasons

25. The respondent accepted the appellant is of Kurdish-Kurmanji ethnicity from South Eastern Turkey and is a supporter of the HDP. She accepted his role included handing out leaflets during elections and attending demonstrations. The appellant is a low level supporter of the HDP not a member of the party.
26. The background evidence, in particular the Fact Finding Mission Report, supported the appellant's claim that there is a perceived link between the HDP and the PKK and low level members of the HDP were targeted by the authorities. In summary, the Report stated that anyone speaking out against the government on issues of Kurdish rights could be arrested and detained. Activism on behalf of the HDP was seen as support for terrorism. Being ethnically Kurdish and politically outspoken could cause the authorities to suspect an HDP member or sympathiser of supporting the PKK. Leafleting and canvassing may attract the adverse attention of the authorities. There were many reports of people being released after arrest and detention on condition of being an informant for the police. The authorities attempted to recruit Kurds as informants especially if their

family was involved in politics. The authorities watched those released and videoed the HDP buildings and rallies.

27. At the hearing before the First-tier Tribunal the appellant submitted that following the failed coup in 2016, there had been a crackdown on any expression of dissent against the government and large numbers of HDP sympathisers were arrested and detained on suspicion of association with the PKK. The risk factors in IK were applicable in the appellant's case and would enhance the risk on return. There had been a deterioration since 2016 and the authorities targeted anyone they suspected of association with the PKK. It was accepted in the CPIN that anyone participating in demonstrations and rallies might attract the adverse attention of the authorities.
28. We are persuaded by Ms Degirmenci's submissions. The judge failed to consider the appellant's evidence in the context of the background evidence and she failed to give adequate reasons for rejecting the appellant's account of being arrested, detained and tortured on three occasions.
29. At [30], the judge failed to consider the appellant's evidence in his interview in which he stated why he attended the demonstration and that the police did not like the HDP and saw them as terrorists. This explanation was supported by the background evidence. The judge's finding that the appellant had provided little evidence about why he was arrested demonstrating against a terrorist organisation was inconsistent with the appellant's interview and the background material in which there was evidence that the HDP were perceived to be associated with the PKK.
30. We find that the appellant's confusion in relation to his brother was insufficient to undermine the appellant's credibility. The lack of corroborative evidence was the reason given for rejecting the appellant's account of detention and torture. We find the judge's credibility findings are inadequately reasoned.
31. In addition, it is apparent from reading [30] to [41], that the judge failed to consider the background evidence when assessing the appellant's credibility. Although the judge was entitled to take into account a lack of evidence, this was insufficient to undermine the appellant's credibility. The appellant's activities for the HDP were accepted by the respondent and his claim to be of interest to the authorities was supported by the CPIN and Fact Finding Mission Report. We find the judge erred in law in relation to grounds 1 to 4.
32. Further, we find the judge failed to properly apply IK in which the Tribunal held at [133]:
 4. The Nufus registration system comprises details of age, residence, marriage, death, parents' and children's details, and religious status. It may also include arrest warrants and if any of the people

listed have been stripped of nationality. There is no evidence that it is directly available at border control.

5. If a person is held for questioning either in the airport police station after arrival or subsequently elsewhere in Turkey and the situation justifies it, then some additional inquiry could be made of the authorities in his local area about him, where more extensive records may be kept either manually or on computer. Also, if the circumstances so justify, an enquiry could be made of the anti terror police or MIT to see if an individual is of material interest to them.
 6. If there is a material entry in the GBTS or in the border control information, or if a returnee is travelling on a one-way emergency travel document, then there is a reasonable likelihood that he will be identifiable as a failed asylum seeker and could be sent to the airport police station for further investigation.
 7. It will be for an Adjudicator in each case to assess what questions are likely to be asked during such investigation and how a returnee would respond without being required to lie. The ambit of the likely questioning depends upon the circumstances of each case.
33. The judge's conclusions at [55] were inconsistent with country guidance. The appellant would be returned on an emergency travel document and therefore there is a reasonable likelihood he will be identified as a failed asylum seeker and questioned at the airport. The judge failed to consider what further action the authorities may take even if the appellant had no history of detention in Turkey.
34. The judge's finding that the appellant had engaged in sur place activities to bolster his asylum claim was not supported by the evidence before her. It was accepted the appellant supported the HDP in Turkey and attended demonstrations there. The untranslated online article from Telegraf contained a photograph of the appellant at a demonstration in the UK standing next to an HDP member of parliament. The judge found that even if the photograph had come to the attention of the authorities the appellant was one of many people who attended that demonstration as low-level supporters of the HDP. The judge failed to take into account the background material in assessing risk on return.
35. We find the judge erred in law as alleged in grounds 5 and 6. She may well have come to a different conclusion on risk on return had she properly considered the appellant's account in the context of the background material and properly applied IK.
36. We find the judge erred in law and we set aside the decision of 26 October 2021. We remit the matter to the First-tier Tribunal for hearing *de novo*. None of the judge's findings are preserved. The appeal is to be listed before a First-tier Tribunal Judge other than Judge Beg.

Notice of Decision

Appeal allowed

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 2 September 2022