**IN THE UPPER TRIBUNAL**
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2023-001653**
**First-tier Tribunal Nos:**
**PA/51103/2021**
**IA/08616/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued**
**On the 19 July 2023**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

**EK**
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Mrs. K. Degirmenci, Counsel instructed by Montague Solicitors
For the Respondent: Ms. S. Cunha, Senior Home Office Presenting Officer

**Heard at Field House on 4 July 2023**

**Order Regarding Anonymity**

**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**.

**DECISION AND REASONS**

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Tozzi (the "Judge") dated 13 February 2023 in which she dismissed the Appellant's appeal against the Respondent's decision to refuse a grant of asylum. The Appellant is a national of Turkey who claimed asylum based on his political opinion and race.

2. No anonymity order was made in the First-tier Tribunal. However, I make an anonymity order given that this is an asylum appeal, and an application having been made by Mrs. Degirmenci. Ms. Cunha did not oppose this.

3. Permission to appeal was granted by First-tier Tribunal Judge Dempster on 14 May 2023 as follows:

> "There are a number of grounds. The first ground asserts that the Judge made irrational findings on credibility. In fact, what is being asserted is that the Judge, in reaching adverse credibility findings, made a number of material mistakes as to fact. There is thus an arguable error of law and permission is granted".

## The Hearing

4. The Appellant attended the hearing. I heard submissions from Mrs. Degirmenci and Ms. Cunha.

5. I stated at the hearing that I found the decision involved the making of material errors of law. I set out my full reasons below.

## Error of Law

6. The grounds assert at Ground 1 that the Judge made many errors in relation to the Appellant's evidence when finding against him on credibility grounds. As submitted, I find that the cumulative effect of these mean that the Judge's overall findings on credibility are not safe and cannot stand.

7. At [46] of the decision the Judge states:

> "The appellant said there were no memorable events around the time he became involved with the HDP. However, information provided by the respondent showed there was a military coup in 2016, where over 200 people were killed and the HDP leaders were excluded from post-coup talks. Further, a bomb attack in October 2016 killed many members of the HDP. The appellant's claim that there were no memorable events was inconsistent with the objective evidence".

8. The grounds refer to this criticism originally being raised in the Respondent's decision based on the Appellant's answer at Q78 of his asylum interview. The Respondent stated that the Appellant was asked whether there were any notable events which happened in 2016. However, the question asked is recorded as "Were there any memorable events going on with the HDP around the time you got involved?" The Appellant was not asked "whether there were any notable events" which happened in 2016. He was also not asked when he became involved with the HDP, so it is not clear what the interviewer meant by "around the time". I find that this is one example of the Judge assuming that what the Respondent asserted in her decision was correct, without going back to look at the asylum interview to see whether the Respondent had quoted and interpreted the Appellant's answers correctly.

9. I find that the same is true in relation to the date of the Appellant's first arrest and detention. At the hearing Ms. Cunha accepted that [12] and [13] of the grounds correctly identified a mistake on the part of the Judge. She referred to the asylum interview at Q6 and Q7 where the Appellant was asked to confirm that the contents of the screening interview were correct. He replied that there was information which needed to be changed. When he was asked what needed

to be changed, he stated that his detention was on 17 October but had been written as 7 October. In her decision at [44] the Judge states:

> "At screening interview the appellant claimed he was detained on 7 October 2018 for 1 day and 3 September 2019 for 2 days, with no conditions on release. At asylum interview he said he was detained on 17 October. Later in the interview he said he was detained on 17 September 2018 and then said he could not remember whether it was September or October".

It is clear from the asylum interview record that right at the start the Appellant corrected the record of the screening interview with regards to the date of detention. There is therefore no discrepancy, as was accepted by Ms. Cunha. She submitted that it appeared to be that the Appellant was confused by dates, and to what extent this revealed an inconsistency rather than confusion was unclear.

10. The grounds point to another finding of inconsistency where the Judge stated that the Appellant was inconsistent as to the age he was when he became involved with the HDP. At [45] the Judge states:

> "The appellant gave an inconsistent account as to when he became interested in the HDP, saying at interview it was when he was 16 years of age but later saying it was 2015/2016, at which time he would have been 14/15 years of age".

11. It asserts in the grounds, as was supported by a witness statement provided at the hearing from an interpreter with Level 3 Certificate in community interpreting, that there was no discrepancy. In Turkey, an individual describes his age by reference to the year that he is in, not the number of years he has completed, as in the United Kingdom. Therefore, where an individual would say that he was 15 years old in the United Kingdom, in Turkey he would say that he was 16 because he had entered his sixteenth year. There was no objection to this evidence by Ms. Cunha at the hearing. I find that this is another instance where the Judge found an inconsistency where there was none.

12. In relation to the Appellant's involvement or association with the PKK, the Judge found at [47] that:

> "The appellant said in his statement that he was asked about links to the PKK when detained and questioned. The skeleton argument went further and claimed the appellant's family supported the PKK and local villagers felt they had to assist the PKK. However, there was nothing in the appellant's statement about any family or local links to the PKK. No questions were asked about this at hearing. I find it is not reasonably likely that the appellant had any or any historic family connections to the PKK. The points in the skeleton argument were unsupported and appeared to be generic".

13. In relation to the skeleton argument, it was submitted at Ground 4 that the factual matrix as set out there was not adopted by the Appellant, and that it would have been unusual for him to do so. Therefore any mistake in the facts as set out in the skeleton argument should not count against him. The grounds refer to [56] of the decision where the Judge states that the Appellant was unable to say why he was targeted other than the police knew his older brothers worked for the HDP. However, the Appellant's evidence was not that he was targeted because of his brothers. I was referred to Q176 to Q178 of the asylum interview. The Appellant was asked about his relatives. There was no reference to the Appellant's brothers. I find that this is a further instance of where the Judge has

not gone back to consider the Appellant's evidence as given at his asylum interview. I find that her finding at [56] is based on an error of fact.

14. I find that some of the matters raised in Ground 2, irrational findings, are relevant to Ground 1 and undermine the findings on credibility. The Judge finds at [42] that:

> "At screening interview the appellant claimed there was a warrant for his arrest in Turkey that was issued in November 2019. At asylum interview he again claimed a warrant had been issued and said it was because the authorities thought he had gone to the mountains rather than Europe. That was inconsistent with the fact that the authorities would have known the appellant flew to the UK on his passport".

It was submitted in the grounds that there had been no evidence before the Judge to suggest that the authorities would have known that the Appellant had flown to the United Kingdom. There was no evidence that any record of the Appellant's departures would have been flagged up with the authorities, in particular the Appellant's local authorities. The grounds also refer to the Country Guidance case of IK (Returnees - Records – IFA) Turkey CG [2004] UKIAT 00312 where the evidence was not that a record was taken of all those who had left the country on departure and where they had flown to would be passed to the local gendarme where the person was from.

15. The grounds also refer to the Judge's finding that the Appellant would not have been able to leave Turkey given that he had been detained on two occasions. At [57] the Judge states:

> "The appellant was unable to explain why he did not flag on a watch list when leaving Turkey, other than to say that people with political issues can leave".

16. The claim that he would have been on a watch list originated in the Respondent's decision and was repeated in the Respondent's review, in reliance on evidence from the CPIN. However, I find that the Respondent did not interpret this correctly. The extract referred to HDP MPs who had had their passports taken away. It refers to an electronic watch list but in the context of MPs, not supporters of the HDP. This is another example of where the Judge has assumed that the Respondent's interpretation of the evidence is correct without properly considering it herself. She has found that the Appellant's credibility is undermined based on an erroneous interpretation of the evidence before her.

17. I find that the cumulative effects of the mistakes made in relation to the credibility findings means that they are unsafe and cannot stand. Given that I have found that the decision contains material errors of law in relation to Grounds 1 and 2, I do not need to proceed to consider the rest of the grounds before me.

18. I have taken into account the case of Begum [2023] UKUT 46 (IAC) and given careful consideration to the exceptions in 7(2)(a) and 7(2)(b). Given that the findings in relation to the Appellant's credibility, and therefore his entire account, cannot stand, I consider that the extent of the fact-finding necessary means that it is appropriate to remit this appeal to be reheard in the First-tier Tribunal.

**Notice of Decision**

19. The decision involves the making of material errors of law.

20. I set the decision aside. No findings are preserved.

21. The appeal is remitted to the First-tier Tribunal to be reheard.

22. The appeal is not to be listed before Judge Tozzi.

23. An application was made under Rule 15 for further evidence to be put before the Upper Tribunal in the event of a remaking. As the appeal has been remitted to the First-tier Tribunal, it is not necessary for me to consider this. Any evidence on which the Appellant intends to rely for the rehearing can be put before the First-tier Tribunal in accordance with directions there.

**Kate Chamberlain**

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
16 July 2023