



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003953
On appeal from: PA/52915/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 18th of July 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

CM (TURKEY)
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Collins (Counsel)
For the Respondent: Mr S Walker (Senior Home Office Presenting Officer)

Heard at Field House on 20th June 2024

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 against the determination of First-tier Tribunal Judge Ian Howard, promulgated on 14th July 2023, following a hearing at Hatton Cross on 2nd May 2023. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Turkey, and was born on 14th May 1997. He appeals against the refusal by the Respondent to grant him leave to remain in the United Kingdom and to grant him asylum in a decision dated 18th July 2023.

The Appellant's Claim

3. The essence of the Appellant's claim is that he is of Kurdish ethnicity, from a village in the Bingol province in Turkey, and that he has been affiliated to the People's Democratic Party ("HDP") since 2014. He has been engaged in encouraging people to vote for the HDP, distributing leaflets, and attending meetings and demonstrations. His maternal uncle was the local HDP candidate in the June 2018 election. On 21st February 2017 the Appellant's home was raided by the authorities and the Appellant was detained and interrogated over a period of two days when he was mistreated. In October 2017 he was again harassed by the authorities and mistreated and a final incident took place in May 2018 when his house was raided again by the authorities and the Appellant was given an ultimatum to inform on the PKK in his village. Upon his release the Appellant's father immediately took steps to remove the Appellant from the village and he fled.

The Judge's Findings

4. The judge held that the Appellant's claim "is a relatively straightforward one", drawing attention to his claim that he was a supporter of the legal HDP, who was considered by the security forces to be actively supporting the illegal PKK, so that on three separate occasions he had been detained and tortured. In the last of these occasions he was forced into agreeing to inform on the activities of the Kurdish movement in his village to the authorities (at paragraph 33). The judge, however, held that, "what does concern me is the lack of consistency in the account of his various claimed detentions" (paragraph 37), and the judge doubted the veracity of the documents produced (at paragraph 39). In the end, the judge, drawing upon the jurisprudence in **IK (Returnees - Records, IFA) Turkey CG [2004] UKIAT 00312** concluded that, "I am not satisfied the appellant has a political profile and where he has evidenced support for the Kurdish cause it is merely by reposting material already on the internet" (at paragraph 42). The appeal was dismissed.

The Grant of Permission

5. The Appellant's application for permission to appeal was initially dismissed by the First-tier Tribunal, which on 5th September 2023, held that, "I accept that the findings are succinct, they are adequate" (paragraph 3) because the judge had given adequate reasons for finding that the Appellant was not a member of HDP, and was therefore "not required to go on and consider the detailed risk factors set out in IK" (paragraph 5).
6. However, on 9th May 2024, DUTJ Shepherd granted permission to appeal in the Upper Tribunal. First, the Appellant had produced documents, which included non-military documents, which were not on headed paper (see IJ's determination at paragraph 39) and he had chosen to give them no weight (see IJ's decision at paragraph 40). However, the Respondent himself had made no explicit findings as to their veracity (see paragraph 26). The judge himself had not found the documents to be false (see paragraph 40).

7. Second, the judge held that the Appellant's credibility regarding his alleged detentions was undermined because he rehearsed events in a different order on different occasions. However, the judge made no findings as to whether the Appellant had in fact been detained at any stage and for how long (see paragraphs 37 to 38).
8. Third, the judge had rejected the Appellant's Facebook evidence but the only comment that the judge made was contained in a single paragraph (see paragraph 41) which did not adopt the approach set out in **XX (PJAK, sur place activities, Facebook) (CG) [2022] UKUT 00023**.
9. Finally, there was a lack of reasoning in the finding (at paragraph 42) that the Appellant had no political profile, and there was no assessment of the Appellant's beliefs being genuine, or of how he would behave on return, so that the judge failed to properly engage with the country guidance case of **IK (Returnees - Records - IFA) Turkey CG [2004] UKIAT 00312**.

Submissions

10. At the hearing before me, Mr Walker, appearing on behalf of the Respondent, submitted that the judge had also failed to consider the question of the political involvement of the Appellant's close relatives and so he would not be opposing the appeal today. Mr Collins, submitted that in this regard, his skeleton argument (at paragraph 13) makes it clear that the Appellant's uncle was a high profile HDP candidate (and that is set out at paragraph 13 of the Appellant's statement on page 236) and that he was a member of the PKK together with the Appellant (see paragraphs 9 to 10 of the Appellant's statement on page 235). This meant that the Appellant was subject to a specific high risk factor as highlighted in **IK [2004] UKIAT 00312**. Mr Collins also added that on core matters presented by the Appellant, although a descriptive analysis was given, there were no findings on the complaints made by the Appellant. Mr Walker agreed that that was the case.
11. Both agreed that the matter should be remitted back to the First-tier Tribunal. However, Mr Collins additionally submitted that given that there was evidence of the Appellant's relatives having been granted asylum by the Respondent it would be useful at the substantive hearing subsequently to have disclosure from the Respondent as to how they were granted protection when the Appellant was not. Mr Walker helpfully suggested that provided that the Appellant's solicitors gave the Respondent details of the named individuals who had been given leave to remain information could be provided in relation to the grant of asylum to the relatives of the Appellant.

Notice of Decision

12. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. This appeal is remitted back to the First-tier Tribunal to be determined by a judge other than Judge Ian Howard because the nature or extent of any judicial fact-finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in Rule 2, it is appropriate to remit the case to the First-tier Tribunal pursuant to Practice Statement 7.2(b).

Satvinder S. Juss

Appeal Number: UI-2023-003953
[On appeal from: PA/52915/2022]

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

12th July 2024