



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

Case No: UI-2024-000263

First-Tier Tribunal No:
PA/51211/2023
LP/01855/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 20th March 2024**

Before

DEPUTY UPPER TRIBUNAL JUDGE JARVIS

Between

AEK (Turkey)
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J. Fathers, Counsel instructed by Bostanci Rahman Ltd.
For the Respondent: Mr M. Parvar, Senior Home Office Presenting Officer

Heard at Field House on 5 March 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant (or any member of her family) 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 her (or any member of her family). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The Appellant has appealed against the decision of First-tier Tribunal Judge Isaacs (and hereafter “the Judge”), promulgated on 18 October 2023 which dismissed the Appellant’s appeal against the Respondent’s refusal of her international protection claim, dated 30 January 2023.
2. Permission was granted by First-tier Tribunal Judge Chowdhury on 24 January 2024; there was no restriction on the grounds to be argued.

Relevant background

3. There is no dispute between the parties that by the time of the hearing before the Judge, the Respondent had accepted significant parts of the Appellant’s claim, namely that:
 - a. Her husband had once been employed by the Turkish military.
 - b. That he was arrested on 5 June 2020 and detained by the Turkish authorities (due to a suspicion that he had been involved in the Gülenist movement) until 8 June 2020 when he was then transferred to prison.
 - c. At para. 14 of the refusal, the Respondent also accepted that material weight should be given to the documentary evidence provided by the Appellant with her further representations, dated 13 October 2022.
 - d. At para. 40, the Respondent again accepted that one of the documents provided by the Appellant showed that the Turkish Prosecutor’s Office had later requested that the Appellant’s husband be charged under Turkish law: Articles 53, 58/9 and 63 on 10 June 2020.
 - e. This therefore means that the Respondent accepted that the Appellant’s husband was accused of being a member of an armed terrorist organisation (“FETO”) relating to the attempted coup of 15 July 2016 – this led to the Appellant’s husband being imprisoned for 7 days until 15 June 2020. The Appellant’s husband was released on bail conditions.
 - f. At para. 27, the Respondent expressly placed weight upon the prison release but pointed out that the document suggested that all of the relevant charges attributed to the Appellant’s husband had been annulled and that she had failed to provide any further documentation to show that any further charges had been added or that her husband was subsequently expected at a court hearing.

4. The Respondent went on to reject the Appellant's claim that she had left Turkey because her husband had absconded from his criminal proceedings and that she had feared for her own safety.

The Tribunal's decision

5. Relevant to the issues in this appeal, the Judge made the following observations/findings:
 - a. The Appellant entered the United Kingdom using a visit visa on 13 July 2022, para. 2.
 - b. Due to her husband's difficulties in Turkey, the Appellant claimed to have been visited by the Turkish authorities on four occasions, para. 4.
 - c. From para. 12 onwards, the Judge made a series of adverse credibility findings and ultimately concluded that the Appellant had not credibly established that her husband was of any ongoing interest to the Turkish authorities and therefore she would face no difficulties herself.
 - d. At para. 13, the Judge concluded that the Appellant could not explain why she was not able to obtain any further documents from her husband's government account after 15 June 2020 despite the fact that she also claimed to have had access to that account until she left Turkey in July 2022.
 - e. The Judge considered that the date of 15 June 2020 was significant because this is the date upon which, the previous arrest warrant had been annulled.
 - f. At para. 14, the Judge further criticised the Appellant for failing to produce the second arrest warrant which the Appellant claims the police in Turkey had when they visited the family home after her husband had failed to attend court in June 2021 and, on her account, had absconded.
 - g. The Judge reiterated the significance of the Appellant's failure to provide further documentary evidence after 15 June 2020 at para. 15.
 - h. The Judge also noted the Appellant's evidence that she had lied in her two visit-visa applications in January 2022 and April 2022 in respect of her husband's employment - the Appellant reiterated that he had in fact already absconded before the June 2021 court hearing and she had not had any contact with him since about a month after he had fled, para. 16. The Judge found that the Appellant had not explained why she had repeated her claim that her husband had been working during this period in her witness statement when she was, by that stage, in the United Kingdom, para. 16.

- i. At para. 17, the Judge also concluded that it was reasonably likely that the Appellant would have had to have provided paperwork with her second visa application to show her husband's earnings and therefore this was a strong indication that in fact he was working at that time and had not absconded as claimed, para. 17.
- j. At paras. 18 - 20, the Judge also made adverse findings about the Appellant's inconsistency as to the level of contact she has with her husband. The Judge also noted that there was no evidence that the authorities in Turkey had issued any proceedings against the Appellant despite remaining in the country 13 months after her husband's alleged failure to appear at his hearing in June 2021 and criticised the Appellant's evidence in respect of why she did not relocate to Kayseri where her parents lived.
- k. The Judge also considered the translations of the documents provided by the Appellant which stated that her husband had been suspended from his role in the military in August 2020; the Judge also recorded that there was a further letter with no obvious date showing that her husband was dismissed from the military. The Judge decided that no weight at all could be given to these documents on the basis that they did not give reasons for the Appellant's husband's suspension or dismissal including there being no reference to any alleged political activities, court proceedings or convictions: see para. 21.
- l. The Judge drew the threads of her reasoning together at para. 22 and made the following findings:
 - i. The Appellant's husband had been of sufficient interest to the authorities in the past that they issued a warrant for his arrest, arrested him, questioned him and then released him.
 - ii. This interest had concluded when the arrest warrant was cancelled on 15 June 2020.
 - iii. The authorities have shown no interest in the Appellant's husband or the Appellant since that date and therefore the Appellant had not shown that it was reasonably likely that she would face a real risk of persecution on return to Turkey.

The error of law hearing

6. The error of law hearing was conducted in person at Field House in London. At the beginning of the hearing I confirmed that the representatives and the Tribunal had the relevant documentation: the composite bundle of 588 PDF pages and the Appellant's skeleton argument authored by Ms Fathers on 26 February 2024.

7. I also asked for the parties to cover in their respective submissions whether the Appellant's claim for asylum (which was made on 13 July 2022), was in fact a case to which section 32(2) of the Nationality and Borders Act 2022 applied. I indicated that this could be materially relevant because the Act applied, on the face of it, to all claims made after 28 June 2022 (when the Act came into force in this part) and required that the assessment of the claimed well-founded fear should be conducted at the balance of probabilities and not the lower standard.
8. Despite this being flagged by the Respondent in the refusal letter, it was unfortunately not grappled with by counsel who drafted the Appellant's skeleton argument for the First-tier Tribunal hearing. It also appears not to have been considered by the Judge when deciding the case and was not dealt with in either the application for permission to appeal to the Upper Tribunal or indeed in Ms Fathers' most recent skeleton argument from February 2024.
9. Ms Fathers asked for 15 minutes to reflect upon this issue and having had that time indicated that she felt able to continue to make the Appellant's case.
10. I then heard oral submissions of which I have kept my own note and at the end I formally reserved my decision.

Findings and reasons

11. I start by reference to ground 2: in this ground the Appellant avers that the Judge materially erred at para. 21 by refusing to give any weight at all to the documents confirming that her husband had been suspended from his job in the military (dated 28 August 2020) and then dismissed from that role (although the Judge found that there was no clear date, there is a handwritten date of 29 November 2021 on the untranslated document). The Judge concluded:

“...I therefore afford them no weight in considering whether the Appellant's husband continued to be of any interest to the authorities after June 2020.”
12. In my view the Appellant has established that the Judge erred in reaching this conclusion. It is plain from the refusal that the Respondent accepted the reliability of all of the documents at “FR P1-P48” which are listed at page 504 of the stitched bundle and which includes the suspension and dismissal documents.
13. There is no suggestion in the Judge's decision that the Respondent sought to withdraw that concession at the hearing and it was therefore procedurally unfair for the Judge to conclude that no weight should be given to those documents, applying (as one example) Abdi & Ors v Entry Clearance Officer [2023] EWCA Civ 1455.

14. I also accept the Appellant's argument that the Judge erred in rejecting the relevance of the letters on the basis that they did not go on to specify why the Appellant's husband had been suspended and/or dismissed. There was no basis upon which the Judge could conclude that those documents *should* contain that information in order to then find that no weight could be attached to them, or in other words to find that they were *unreliable* documents.
15. I have considered whether the error is in fact material to the outcome and have concluded that it is. The Judge expressly found against the Appellant's credibility on the basis that she had failed to provide further evidence dated after June 2020. I have found that, in coming to that conclusion, the Judge unlawfully refused to give any weight to documentation which was in fact issued after June 2020 and spoke to the Appellant's husband's suspension and dismissal from the military. It is certainly true that the documents do not themselves say why he was suspended and later dismissed but it was not, in my view, permissible for the Judge to effectively exclude those documents by declining to give them any weight at all.
16. Stepping back from the detail it is important to keep in mind that the Appellant had provided uncontested background evidence indicating that soldiers with links to the Gülenist movement were sacked. These documents then were plainly relevant to the Appellant's claim that her husband was still considered to be linked to that movement and that he was a fugitive after June 2021.
17. The Judge understandably looked carefully at the absence of any further court documentation after June 2020 and this remains a significant point which the Appellant must grapple with but, as I have sought to explain, I have concluded that the Judge's assessment of the overall credibility picture was flawed.
18. On the basis of that conclusion I do not need to go on to consider the other grounds.

Notice of Decision

The decision of the Judge contains a material error of law such as to require it to be set aside in its entirety. No findings are to be preserved.

Remaking

In light of my conclusions, I find that the appeal must be redecided in its entirety and fairness requires that this is done in the First-Tier Tribunal by a judge other than Judge Isaacs.

I P Jarvis

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

13 March 2024