IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001216
First-tier Tribunal No:
PA/52845/2022
IA/07206/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 29 May 2024

Before

UPPER TRIBUNAL JUDGE RIMINGTON
DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

NG
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Ms F Shaw, Counsel; instructed by Kreston Law Limited
For the Respondent: Ms C Everett, Senior Home Office Presenting Officer

Heard at Field House on 9 May 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. The appellant appeals with permission against the decision of First-tier Tribunal judge Hussain (the judge), who dismissed the appellant's appeal against the refusal of his protection and human rights claim owing to fear of risk of return to Turkey because of his HDP membership and his Kurdish ethnicity.

2. The grounds of appeal were as follows:

(i) The judge's conclusions and findings were flawed bearing in mind the acceptance of the appellant's membership of the HDP and his Kurdish ethnicity and the judge's acknowledgement at [35] of the appellant's support for the PKK. Given the background material which included the Country Policy Information Notes on (i) the Peoples' Democratic Party (HDP) Version 5 October 2023, (ii) Kurds Version 4 October 2023, and (iii) Kurdistan Workers Party (PKK) Version 5 October 2023, all of which explained the risk to those perceived as being engaged with the PKK, the judge's approach to the appeal was flawed and the conclusions contrary to the risk explained in the background material. The appellant could not show that he was not a PKK supporter, which carried risk, and yet the judge found to the contrary. The judge's approach was at odds with the Turkish country guidance case IA and others (Risk Guidelines -separatist) [2003] UKIAT0034.

(ii) The judge had failed properly to engage with the risk to the appellant owing to his Kurdish ethnicity and had failed to consider the risk to the appellant as a Kurd in detention. The background material, indeed the Report of a Home Office Fact Finding Mission -Turkey Kurds, the KHDP and the PKK dated 20th October 2019 ('FFM 2019'), identified at 7.2.2 routine custody periods of 48 hours and the judge had failed to address the appellant's evidence (which was that he was generally held for 2 days at a time) in the context of this consistent material. Further, the CPIN on Kurds identified a risk of discrimination, which included a description at section 14 of risk of death, illness and violence. The judge, however, failed to consider the appellant's risk in detention.

(iii) the judge found that the appellant was able to relocate internally should he need to avoid adverse interest on return. Given the respondent's CPINs with regard to the risk to HDP/PKK supporters from the state, the judge's finding was wholly contrary to the respondent's CPIN on Kurds, which at section 4 identified that where a person had a well found fear of persecution from the state they are unlikely to be able to avail themselves of the protection of the authorities.

(iv) the respondent accepted, as did the judge, that the appellant was an HDP supporter and on his three claimed arrests the appellant provided considerable detail during his interviews (contrary to the finding of the judge). This in turn was supported by photographs of the torture he suffered. Whilst a scarring report may have confirmed that the appellant's scars were consistent with beatings and torture he claimed, such a report was unlikely to be conclusive and the judge erred in placing weight on the absence of an expert report.

3. At the hearing before us Ms Shaw relied on her written grounds and took us through some of the evidence. There was no rule 24 reply. Ms Everett conceded that the judge had erred in approach on ground (iii) but also submitted that first there needed to be a risk to the appellant. She accepted that this in turn depended on his credibility.

Conclusions

4. We note Ms Everett's concession and agree that the assessment of credibility is at the heart of this appeal. We take grounds (i) and (ii) together. In terms of credibility as Ms Everett tentatively accepted, the judge engaged in speculation. We note for example that at [46], the judge stated he could not understand why

the appellant needed to publicise the ideals of the HDP given it was a major party and plays a significant role in Turkish politics and remarked how it was that a leaflet would 'go to suggest that it [HDP] is not involved in terrorism'. First the CPINs, based on the respondent's own FFM 2019, acknowledged the attitude of the Turkish authorities to the HDP, and secondly the judge imported his own view of the role of a leaflet. Additionally, at [47] the judge found it 'surprising that the appellant's parents would have allowed him to attend a protest meeting' and 'it is not clear to me why the authorities would have seen it worthwhile expending their resources to make their way to the home of a 16 year old protestor and then to only detain him for two days'. These are just a selection of the findings of the judge which were made in relation to credibility and prior to the conclusions on the arrest warrant. At [48] the judge found that 'It also seems to me remarkable, that in the same month [as the release from detention] the appellant's father managed to find an agent to facilitate his departure out of the country'.

5. Judges should be cautious against assessing the nature of the claimed risk "based on their own perceptions of reasonability". Neuberger LJ (as he then was) stated in HK v. Secretary of State for the Home Department [2006] EWCA Civ 1037 at [29]:

> "Inherent probability, which may be helpful in many domestic cases, can be **a dangerous, even a wholly inappropriate, factor to rely on in some asylum cases**. Much of the evidence will be referable to societies with customs and circumstances which are very different from those of which the members of the fact-finding tribunal have any (even second-hand) experience. Indeed, it is likely that the country which an asylum-seeker has left will be suffering from the sort of problems and dislocations with which the overwhelming majority of residents of this country will be wholly unfamiliar. The point is well made in Hathaway on Law of Refugee Status (1991) at page 81: 'In assessing the general human rights information, **decision-makers must constantly be on guard to avoid implicitly recharacterizing the nature of the risk based on their own perceptions of reasonability**.'"

6. Turning to the consideration of the arrests, the judge made no reference to the background material, FFM at section 7.2.4, which identified that for detentions for terror related crimes the custody period will be 48 hours but that the period might be extended by a Magistrate Judge on hearing the suspect in person; the fact this evidence was consistent with the appellant's claimed detentions of two days was not addressed in relation to credibility.

7. The judge also rejected the appellant's claim of the warrant of arrest reasoning that the evidence was 'extremely vague'. However as Ms Shaw pointed out the appellant had explained in detail, factors in relation to the arrest warrant and the judge had recorded this at [33].

8. The judge proceeded to find at [49] when considering credibility and the arrest warrant that the appellant had not explained how he managed to leave his country through legal channels without being detected. At [48], however, the judge had already recorded that 'the appellant's father managed to find an agent to facilitate his departure out of the country'. That was not addressed.

9. The respondent had accepted that the appellant was of Kurdish ethnicity and that he was a member of HDP. The findings in relation to credibility, particularly as to previous treatment and arrests were significant for and underpin the proper application of the country background material and guidance. As the reasoning on credibility was flawed we find that the judge's engagement with the background material also contained material errors of law. Grounds (i) and (ii) are made out. Ground (iii) was conceded although it rested on ground (i) and (ii).

10. In relation to ground (iv) we acknowledge that the judge rejected the photographs on the basis that they were not dated and there was no expert medical scarring report. The appellant, however, claimed asylum in 2018. His witness statement avers to him being attacked at least on one occasion in May 2016. That is the date given on the photographs produced. It does not appear that this was explored or engaged with in the conclusions although there is a record of some of the evidence thereon at [37].

11. Overall we find the conclusions on credibility, the approach to the country background material and the ability of the appellant to relocate are flawed and contain material errors of law.

Notice of Decision

12. The Judge erred materially for the reasons identified. We set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

Helen Rimington

Judge of the Upper Tribunal Rimington
Immigration and Asylum Chamber

28th May 2024