Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/02780/2017**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 14 November 2017	**On 21 November 2017**

Before

UPPER TRIBUNAL JUDGE WARR

Between

MG
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss S Panagiotopoulou, Counsel instructed by Montague Solicitors LLP
For the Respondent: Miss Z Ahmed, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Turkey born on 10 October 1994. He arrived in this country on 2 September 2016 and applied for asylum on that day. The application was refused on 3 March 2017. The appellant appealed and his appeal came before a First-tier Judge on 19 April 2017. The judge noted that the appellant's claims were based on his fear of persecution in Turkey on the basis of imputed political opinion as a supporter of the

Peace and Democracy Party (BDP) and the People's Democratic Party (HDP). He also said he was of Kurdish ethnicity and of the Alevi faith.

2. The appellant claimed to have been detained by the Turkish police on 12 October 2015 where he was ill-treated and questioned about being a member of the PKK. He was released after two days. He was again arrested he claimed on 12 August 2016 and detained for three days, and again accused of being a member of the PKK. He said he had accepted the accusations after three days of ill-treatment because he believed he was in danger of his life and he was released on condition that he would act as an agent. The appellant travelled to Istanbul and paid an agent with the assistance of his father to enable him to leave the country on a Turkish passport.

3. Although the Secretary of State did not accept that the appellant was Kurdish or of the Alevi faith, these issues were resolved in favour of the appellant by the First-tier Judge and there has been no cross-appeal on her findings. The judge did comment that the appellant was not particularly active or devoted in his practice of the Alevi faith.

4. The judge then turned to consider the issue of the appellant claiming to be a member and/or supporter of the BDP and the HDP. The judge identified significant credibility issues and found in paragraph 32 of her decision that given the contradictions and vague answers to questions she did not accept that the appellant had any meaningful connection with the HDP or that he participated in activities or protests. The appellant had claimed to be in the youth arm of the BPD and an active worker for the HDP.

5. The judge then went on to consider the question of the appellant's claimed arrest and detention which she rejected for the reasons set out in paragraphs 33 and 34 of her decision as follows:

> "33. I went on to consider the appellant's claims of having been arrested, detained and tortured by the Turkish police on two occasions. First of all with regard to the claimed arrest on 12 October 2015, the appellant said that he and a friend were taken to police headquarters. He said that he did not know what happened to his friend but he was accused of involvement with the PKK which he has consistently denied. The respondent is wrong to suggest in the letter of refusal that the appellant admitted to being in the PKK. It is clear from his interview responses that he did not admit to being in the PKK. Whilst the appellant describes a typical method of torture, ie of being hosed down; he does not explain how he sustained the injury which resulted in the scar on his shoulder. It is the appellant's case that the scarring on his shoulder is the result of having been tortured. He also incurred a head injury resulting in a scar on the occasion of the first arrest. It is the appellant's claim that he was beaten up and blindfolded. No medical evidence was adduced to support the appellant's account of the scarring. The appellant gave no details as to specifically how the shoulder injury

occurred other than to say he had been dragged to the floor. No evidence was adduced as to say whether he required medical attention save to say that the appellant visited a doctor in the United Kingdom and was now taking medication. I find the appellant's accounts of the arrests to be implausible. He said he was singled out together with his friend because he was Kurdish and yet it is the appellant's case and it has been accepted by the respondent that he lived in an area which was not Kurdish and his first language was Turkish. It does not explain how he was able to be identified by the police in this way. I have found that the appellant did not have a political profile or association with the HDP, in the absence of this I am unable to find that the appellant's account is truthful with regards to him having been taken away by the police. Furthermore, according to the appellant he was simply released 'due to lack of evidence'. This seems improbable given that the appellant goes on to say that on 12 August 2016 he was 'sought' by the police again in terms of three military vehicles and four solders [sic] attending at his home. He was asked for by name according to his account at interview and grabbed by two soldiers with a further two soldiers searching the house and he was then taken away. According to the appellant, he was taken to the Kahramanmaras, the special branch that combats terrorism. If the appellant is to be believed this would suggest that he has a profile that was known to the police. This does not sit credibly with the appellant's claim that he was released because there was no evidence against him only some months previously in October 2015 and August 2016 to explain why the police would come in the way that they did and in such numbers with three military vehicles in order to find him. I find that his account lacks credibility.

34. It is the appellant's case that he was then subjected to further torture while he denied being a member of the PKK. According to the appellant the interrogators were able to find out nothing from him because he had nothing to disclose to them and yet it is his case that he was released on condition that he would then act as police informer. I find this to be improbable. It is not, in my finding, credible to suggest that having been able to give the interrogators no information whatsoever that the appellant would then be released on condition that he became an informer. I therefore find that his whole account of arrest and detention lacks credibility."

6. The judge identified further credibility issues regarding the length of time the appellant had spent in Turkey after his arrest and before his departure to the UK. She found that the inconsistencies undermined the credibility of his account that he had ever been arrested in the middle of August or at all. In paragraph 36 she considered that the claim that the family were able to obtain a substantial sum to pay the agent to help him leave Turkey lacked credibility given that the family were farmers. It was claimed he had paid the agent $US10,000. She found the account of how he had

obtained a visa and dealt with the agent to be vague. His account of handing his passport to someone on the plane and not getting it back was improbable.

7. The judge concluded that the appellant did not have a political profile and she disbelieved his accounts of having been arrested, detained and tortured.

8. She considered the risks on return in paragraph 39 of her decision as follows:

> "I then went on to consider the appellant's risk on return as a failed asylum seeker of Kurdish ethnicity and Alevi faith. The appellant relies on the case of **IK**. I considered the factors in that case and find that he is not known to have any suspected involvement with a separatist organisation. This is because I do not believe his accounts of having been arrested or detained. I do not believe he was beaten or tortured by the authorities and I do not accept that there was only a short amount of time between his last arrest and him leaving Turkey for the reasons set out above. This is because I do not believe he was ever arrested. Neither do I accept that he was asked to be an informer and whilst I have been shown one photograph of him having attended a Nevruz celebration in the UK, this falls short of demonstrating that he has become involved with political activities in the United Kingdom. I accept only that he is of Kurdish ethnicity and Alevi faith and I was not presented with any other information in the objective evidence as to why for these reasons alone he would be at risk on return. He has completed his military service. Because I do not accept his accounts of having been arrested or detained I do not accept that he was fingerprinted or photographed. Whilst he would fall into the category of those returning on a one way emergency travel document, because I have not accepted that he left the country with the assistance of an agent it is likely, in my finding, that he left the country legally and therefore even if he is investigated as a failed asylum seeker, it is my finding that there is no real risk of persecution as a consequence for the reasons as set out above."

9. In considering the question of humanitarian protection the judge noted recent difficulties in Turkey following the referendum, but found she had not been presented with evidence to show that there was such a high level of indiscriminate violence arising from armed conflict as to expose the appellant to a serious and individual threat. She accordingly dismissed the appeal on all grounds.

10. Counsel who had represented the appellant at the appeal (not Miss Panagiotopoulou) settled two grounds in support of the application for permission to appeal. Reference was made to paragraph 33 of the decision where the judge had referred to three military vehicles coming to the appellant's village in order to find him. It was submitted that this was not an accurate reflection of what the appellant had said in oral evidence. The appellant had stated in interview that three military vehicles had

come to his village, four soldiers had come to his house and they asked for him by name and he was detained. The appellant had not asserted that he thought the three military vehicles had been sent for him specifically. The appellant had been asked to re-clarify in re-examination whether he was saying that the vehicles came generally to the village or that he thought they were sent specifically for him and he had answered "Generally they came, then arrested me".

11. In relation to ground 2 and the risks on return reference was made to an additional witness statement drafted and filed on the day of the hearing dated 19 April 2017 referring to a recent incident where, following the referendum in April 2017, a group of people who were supporters of the Government/authorities had attended the appellant's parents' home and threatened to harm them and demanded to know where the appellant was now living. This had not been considered when assessing the risk on return.

12. Permission to appeal was granted by a First-tier Judge on 13 September 2017. Reference was made to a note of the proceedings compiled by Counsel instructed to appear before the First-tier Judge confirming what was said in the grounds of appeal about the military vehicles. The judge had placed heavy reliance on the error of fact and it was a material error of law.

13. In relation to the risks on return reference was made to the handwritten statement drafted on the day of the hearing with the assistance of Counsel where the appellant had referred to the incident following the referendum where a group had attended his parents' home and threatened to harm them and demanded to know where the appellant was living. The judge made no reference to this matter.

14. Miss Ahmed took me to **AM v Secretary of State [2012] EWCA Civ 1634** where Ward LJ had referred at paragraph 54 to **Piglowska v Piglowski [1999] 1 WLR 1360** and what had been said by Lord Hoffmann at page 1372 and in particular on the point that an Appellate Court "should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which enables them to claim that he misdirected himself." The judge had not erred in paragraph 33 in terms of referring to three military vehicles and there was no merit in the argument. The findings had been open to the First-tier Judge. In relation to the second ground Miss Ahmed referred to **Muse v Entry Clearance Officer [2012] EWCA Civ 10** where reference had been made by Toulson LJ to what had been said by Lord Brown in **South Bucks District Council v Porter (2) [2004] UKHL 33** and in particular the sentence "The reasons need refer only to the main issues in the dispute, not to every material consideration." It was clear when the decision was read as a whole that the judge had disbelieved the account given. She did not consider that the appellant had been truthful. Miss Ahmed referred to **IA Somalia v Secretary of State [2007] EWCA Civ 323** and submitted the judge

could not have come to a different conclusion and there was no material error of law.

15. Counsel submitted that it was plain that the judge had not referred to the appellant's evidence in the second witness statement and it was clearly a material error of law. In relation to the first ground the judge had misunderstood the appellant's position about the number of vehicles seeking him – they had not come specifically for the appellant. If she had understood the evidence properly she might have accepted the appellant's account. Accordingly, the decision was materially flawed in law and a fresh hearing was required.

16. At the conclusion of the submissions I reserved my decision. I can only interfere with the decision of the First-tier Judge if it was flawed in law. I note that the judge had the benefit of hearing oral evidence from the appellant and his uncle. The general approach of the First-tier Judge was fair in that she rejected part of the Home Office case, resolving the issues of Kurdish ethnicity and Alevi faith in favour of the appellant. However, as I have already said, the judge made negative credibility findings in respect of the appellant in paragraphs 30 to 32 of her decision. It is said that the judge erred in placing weight on the question of whether the three military vehicles had come specifically to attend at his home with four soldiers. It is said that in re-examination the appellant was asked "Do you mean they [sic] three vehicles came just for you or generally to the village?" and the appellant replied, "Generally came and arrested me." I note that in answer to question 97 at the appellant's interview he was asked how many people had come to his house on 12 August 2016 and he is recorded as having replied "Three military vehicles, four soldiers came into the house." I am not satisfied that the judge erred in her consideration of the facts still less that she misdirected herself in law in her consideration of the material before her. She was entitled to conclude that the appellant's account lacked credibility.

17. In relation to the second ground it is said that the judge did not have regard to the appellant's witness statement handed in at the hearing and dated 19 April. In fact, at paragraph 24 of the decision the judge records the documents which she had taken into account and she makes specific reference to this document at 24(vi): "Handwritten witness statement of the appellant also dated 19 April." Accordingly I find no reason to doubt that the judge had taken the witness statement into account. I am satisfied she would have had it mind and would have given it appropriate weight.

18. The judge comprehensively rejected the appellant's claim of arrest, detention and ill-treatment and found that the appellant had no political profile. She noted current developments in Turkey after the referendum. The absence of an express reference to what was said in the witness statement was not a material error of law in my view. Viewed as a whole the determination is well and properly reasoned and the judge's finding that the appellant would not be at risk on return was open to her.

19. I do not find that the grounds identify a material error of law and accordingly this appeal is dismissed.

Anonymity Direction

20. I deem it appropriate to make an anonymity direction in this appeal. Anonymity order made.

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

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

TO THE RESPONDENT
FEE AWARD

The First-tier Judge made no fee award and I make none.

Signed Date: 20 November 2017

G Warr, Judge of the Upper Tribunal