



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/07942/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 15 December 2017**

**Decision & Reasons
Promulgated
On 30 January 2018**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**O.N.
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr L Tarlow, Home Office Presenting Officer

For the Respondent: Ms S Panagiotopolou, Counsel instructed by Sentinel Solicitors

DECISION AND DIRECTIONS

1. The respondent (hereafter the claimant) is a national of Turkey. He arrived in the UK in February 2017 and claimed asylum the following day. The basis of his claim was that he was an Alevi Kurd who in 2015 became a supporter of the People's Democratic Party (HDP). He had been detained and ill-treated by the Turkish authorities who suspected him of involvement with the PKK. After he was released and continued his minibus activities in support of the HDP, his minivan was stolen. When he

and his father went to the police they were thrown out. When his father took him to a different town to stay with relatives, the place he was staying at was raided twice by the police who threatened his family. His younger brother has since gone missing. His father then arranged for his exit from Turkey. He left Turkey in early February 2017.

2. The appellant (hereafter the Secretary of State or SSHD) did not accept that the claimant was an Alevi or a Kurd and considered that the account he gave of problems he had had with the Turkish authorities because of his support for and involvement with the HDP was not credible.
3. The claimant's appeal came before Judge McLaren of the First-tier Tribunal (FtT). The judge heard the oral testimony of the claimant and then heard submissions. The judge accepted he was an Alevi Kurd and believed the account he had given of problems with the Turkish authorities.
4. The SSHD's grounds of appeal mentioned that the judge's decision was legally flawed because he failed to give adequate reasons for finding the claimant's account credible and failed to then engage with the HOPO's submissions identifying a number of shortcomings in that account.
5. I heard submissions from both representatives. Ms Panagiotopolou submitted that the judge's acceptance of the claimant's account in paragraphs 40-42 had to be read in the context of the determination as a whole which featured a very detailed summary at paragraphs 31-38 of the SSHD's reasons for considering the claimant had not given a credible account as well as evaluative observations made in earlier paragraphs summarising the evidence. Thus the judge's statement at paragraph 40 that the claimant demonstrated his ability to read and speak in Kurdish dialect had to be read in conjunction with paragraph 18 where he recorded that the claimant had been able to translate words in a photograph from Kurmanji into Turkish; and the judge's findings at paragraph 40 that the claimant had shown sufficient knowledge of the Alevi religion had to be read together with paragraph 14 where the judge noted that the claimant's statement that there was no Alevi education at school was "certainly consistent with the country guidance [by which the judge meant the Home Office Information Note] as was the information he gave about his belief and the differences between these and other Muslims." Paragraph 14 also shed light on the issue of why the claimant had not mentioned "Alevi" in his identification card. Similarly, she submitted the judge's, statement at 39 that he had considered the claimant's account "against the country background evidence..." was reinforced by things he had said at paragraphs 9, 28, 29, 30 and 35.
6. Despite Ms Panagiotopolou's well-formulated submissions I am persuaded that the judge's treatment of the issue of the claimant's credibility was legally flawed. Whilst the judge identified the SSHD's points adverse to the claimant very fully at paragraphs 31-38, his own finding and reasons really only address issues concerning the claimant's ethnic origin and

religion. No reason is given in particular as to why he believed the claimant's account of becoming involved with the HDP and being targeted as a result. It may just about be inferred that the judge considered the documentation and photographic evidence produced by the claimant to support his claim, but if so, he did not explain why and did not engage with the respondent's concerns about the inconclusive nature of the photographic evidence, despite recording at 34 that the SSHD did not accept that the photographic evidence showed bullet holes and did not accept that the claimant had provided sufficient evidence as to the date on which this happened. The judge left unaddressed the points raised by the respondent regarding the implausibility of the authorities releasing him simply because he said he did not work for the PKK; the implausibility of them only apprehending the claimant and not other party members on his minibus; the implausibility of the police firing on his minibus when he had previously complied with a checkpoint search; and the implausibility of the authorities raiding his home when they had been happy to release him with no conditions only a month earlier. At paragraph 37 the judge summarised the HOPO's oral submission as follows

"At the hearing the Home Office presenting officer also submitted that the omission of the events that occurred to his brother and his father from the witness statement affected the appellant's credibility. He also submitted that the appellant had been very unclear in his evidence when asked as to dates and when he became aware of things and who had told him this which also affected his credibility. The respondent also relied upon the fact that the appellant produced more details about his brother's detention than he had done before and this again was a credibility issue."


7. Regarding these key conflicts in the evidence, the judge says not a word in his own findings.
8. The judge's failure to engage with key discrepancies in the claimant's evidence as identified by the SSHD in the refusal letter and the HOPO at the hearing amounted to a material error of law and his decision is set aside for this reason.
9. In light of the judge's failure to deal adequately with the issue of credibility, the case is remitted to the First-tier Tribunal. Whilst it will be a matter for the judge at the next hearing to decide, it may be thought that as regards his ethnic and religious identity the claimant's evidence before the FtT judge went a considerable way to allaying the concerns expressed by the SSHD in the refusal letter.

To summarise:

The decision of the FtT judge is set aside for material error of law.
The case is remitted to the First-tier Tribunal (not before Judge McLaren).

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 their 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.



Signe:

Date: 28 January 2018

Dr H H Storey
Judge of the Upper Tribunal