



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

Appeal Number: PA/08616/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 21 November 2018**

**Decision & Reasons
Promulgated
On 12 December 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

**HUSEYIN [O]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs K Degirmenci of Counsel, Montague Solicitors LLP
For the Respondent: Ms N Willocks-Griscoe, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal from the decision of First-tier Tribunal Judge Roopnarine-Davies which was promulgated on 24 August 2018. The appellant is a national of Turkey who arrived in the United Kingdom on 24 December 2017 and claimed asylum immediately thereafter.
2. The First-tier Tribunal dismissed the appellant's appeal on asylum grounds, on humanitarian protection grounds and on human rights

grounds. Detailed grounds of appeal led to the grant of permission by First-tier Tribunal Judge McCarthy on 27 September 2018.

3. Oral submissions before me focused on periods of detention alleged by the appellant to have taken place in 2013 and 2016 and claimed ill-treatment. The judge's findings in that regard are not particularly clear: in certain places they seem to reject the claim that there was a detention although at paragraph 22 the judge remarks:

“... even accepting that [the appellant] may have been arrested in 2013 and 2016 he was not singled out for arrest but part of a group of protestors.”

It seems to me, reading the decision holistically, that the judge formed the view on a balance of probabilities that there had been an arrest and detention.

4. That then leads to a fundamental difficulty with the decision. In paragraph 29 the judge addresses risk factors on return by making reference to **IK (Returnees, Records, IFA) Turkey CG [2004] UKIAT 00312** although the case law is not set out with any level of particularity. While the judge gives a degree of balance to the assessment, it is limited to the following at paragraph 29:

“Other than the fact that this appellant is an Alevi Kurd this appellant does not meet the risk factors in **IK** above. He has not shown that he comes from a politically active family. His uncle was granted asylum some 18 years previously. He claimed that his father was an activist with little detail offered and by his own evidence his father is living a normal life in Turkey today. It cannot be assumed that he is a draft evader because he has two years to fulfil this obligation but it is common sense to assume that this may have affected the credibility of his claim and a factor in leaving the country.”

5. It is a well-recognised risk factor within **IK** that an individual has been arrested and brought to the police attention in the past. The fact that the judge did not factor that issue into the **IK** assessment causes me concern. But it is not an isolated incident: a number of the other complaints made by the appellant in the grounds also have substance.
6. On repeated occasions the judge implies that there is a requirement for there to be corroboration of an appellant's claim and seems to draw an adverse inference from the apparent lack of corroborating evidence. This is a flawed approach and one which, because it is repeated, seems to be have embedded itself in the judge's mind causing her to make adverse credibility findings, such that at paragraph 30 she states in clear terms: “He has fabricated a claim to asylum.”
7. Further, on at least two occasions the judge has indulged in speculation. First she states at paragraph 28 that it cannot be discounted that the appellant has a Turkish passport; and secondly she states, without any evidential basis, that the appellant was motivated solely to avoid conscription by way of military service. Not only is that latter conclusion

speculative, it does not sit well with another finding of the judge, namely that there was a two year period during which the obligation to carry out military service could have been fulfilled.

8. I am additionally caused concern that the judge seems to have approached the country guidance and other country material in a somewhat limited, and highly selective manner, summarising at paragraph 25 material put before the Tribunal by the respondent. There seems is no reference to, still less express discounting of, the material which had been lodged by the appellant, and was relied on.
9. Looking at the totality of this decision in the round, whilst it may be that one or more of the errors I have identified that might not of themselves have been sufficient to justify setting aside the decision, when taken collectively the safety and reliability of the disposal in the First-tier Tribunal appears questionable. I cannot be confident, as a reviewing body, that all aspects of the appeal received anxious scrutiny.
10. The only appropriate course is to set aside the decision and remit it to the First-tier Tribunal to be decided afresh. I make it clear, however, that it is perfectly possible that a different judge may come to exactly the same overall conclusion. However, because of the failures of reasoning and the manner in which the decision was articulated, it cannot be allowed to stand and must be reheard.

Notice of Decision

- (1) The decision of the First-tier Tribunal is set aside the appeal is remitted to be decided afresh by a judge other than Judge Roopnarine-Davies.
- (2) No factual findings are preserved.
- (3) No anonymity direction is made.

Signed *Mark Hill*

Date

7 December 2018

Deputy Upper Tribunal Judge Hill QC