



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

Appeal Number: PA/12387/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 7 May 2019**

**Decision & Reasons
Promulgated
On 13 May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE FROMM

Between

A T
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Panagiotopoulou, Counsel

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS ON ERROR OF LAW

1. The appellant appeals with the permission of the First-tier Tribunal against a decision of Judge of the First-tier Tribunal Callow dismissing his appeal against a decision of the respondent, dated 17 October 2018, refusing his protection claim.
2. The appellant is a Kurdish Alevi citizen of Turkey. He arrived in the UK on 21 August 2017 and claimed asylum the same day. He gave an account to the respondent of having been involved with the HDP since

2015. He became a member in July 2016. He used to distribute leaflets and encourage people to join protests. On 6 November 2016 he was arrested during a protest and detained for two days. He was released due to lack of evidence. He was detained a second time on 25 July 2017 as he left the HDP office in Istanbul. On this occasion he was threatened with death and accused of being a member of the PKK. He was ordered to become an informer. However, the appellant left Turkey.

3. The respondent rejected the claim. It was accepted that the appellant was a low-level supporter of the HDP as he claimed. However, his account of being detained and beaten by the Turkish authorities was rejected despite medical evidence being produced confirming he had injuries.
4. The appellant appealed on protection grounds and his appeal was heard by Judge Callow on 22 November 2018 at Taylor House. The judge's findings begin at paragraph 29 of his decision. He reasoned that the core of the appellant's claim, whereby he agreed to become an informer in the absence of any incriminating evidence against him and in circumstances where no charges had been preferred, did not make sense. If the authorities believed he supported the PKK, he would not have been a person whom they would trust.
5. The judge inferred the appellant was not of any interest to the authorities. He noted the appellant's account of his political activities for the HDP was insubstantial and in circumstances where his knowledge of the PKK was limited. He considered there was no suggestion that those activities were illegal or clandestine. The demonstrations which the appellant participated in were mass group activities organised by others. The appellant, as a low-level member of the HDP, would hardly have been a useful source of information for the authorities. He held no office in the party.
6. The judge noted by way of background that the HDP is represented in the Turkish parliament and therefore the appellant's evidence that it was an offence to be a member defied belief.
7. The judge noted that the appellant's scars had been assessed as consistent with his account of ill-treatment. However, the judge reasoned, had the appellant been tortured to the extent he claimed, it could reasonably be expected that he would have sustained long-lasting injuries. In any event, these injuries could have been caused by means other than assault by the authorities.
8. In conclusion, the judge accepted the appellant was a member of the HDP but not that the events which the appellant says led him to leave Turkey had been established. He concluded the appellant had fabricated his claim.

9. Four grounds were advanced in support of the application for permission to appeal against Judge Callow's decision and permission to appeal has been granted to argue all of them.
10. No rule 24 response has been filed by the respondent.
11. I heard submissions from the representatives as to whether Judge Callow made an error of law in her decision.
12. Ms Panagiotopoulou's submissions broadly followed her grounds seeking permission to appeal.
13. Firstly, she argued the judge had failed to give adequate reasons for some of his findings. In particular, she highlighted the statement in paragraph 33 of the decision where the judge stated that the appellant had been generally unreliable as a witness without at that point providing any reasons. Ms Panagiotopoulou also highlighted paragraph 34 in which judge considered the appellant's injuries would have been more long-lasting. The grounds point out that the medical report of Dr Hajioff described the appellant's scars in detail and considered they were consistent with the account of the appellant's ill-treatment.
14. Secondly, Ms Panagiotopoulou argued the judge's approach to the background evidence was erroneous. The judge's conclusion that a low-level member of the HDP would not have attracted the adverse attention of the authorities was inconsistent with the background evidence which showed that, despite the HDP being a legal party with 67 seats in Parliament, members and supporters have been disproportionately targeted by the authorities due to the perceived link between the HDP and the PKK. There was evidence before the judge showing that thousands of HDP militants and supporters were currently in custody.
15. Thirdly, Ms Panagiotopoulou argued the judge had made inconsistent findings. The judge had apparently accepted that the appellant was a member of the HDP, had distributed leaflets and participated in demonstrations and that he had been arrested and injured. However, in paragraph 36, the judge concluded the appellant had fabricated his claim of political activity and adverse attention.
16. Fourthly and finally, Ms Panagiotopoulou argued the judge had placed undue weight on peripheral matters and the lack of supporting evidence from his parents and sisters.
17. In reply, Ms Everett acknowledged she had a concern about paragraph 33 of the decision because she could not find any reference in the evidence to the appellant claiming that it was an offence to be a member of the HDP. She also agreed that it was unclear which parts of the appellant's political activities the judge was referring to in

paragraph 36. She agreed with Ms Panagiotopoulou that the judge's conclusions about risk on return were speculative to the extent they did not recognise that what was important was the perception of the authorities, not the appellant's actual knowledge of political parties and his usefulness as an informer. In terms, Ms Everett agreed with Ms Panagiotopoulou that the decision should be set aside.

18. I do not agree with all the grounds. For example, the judge was entitled to apply the principle in *TK (Burundi)* and draw an adverse inference from the absence of evidence which it could reasonably be expected would be provided and which it would not be difficult to obtain. I also consider he showed sufficient familiarity with the background evidence because he referred to it at paragraphs 12, 20 and 30. His findings and conclusions were not outside the range of outcomes which would be consistent with that evidence.
19. However, I find the judge did fall into material error as a result of his finding in paragraph 36 that, "*the appellant's account of political activity and of adverse interest in him by the authorities is not credible. I find that the appellant has fabricated his claim*". Whilst this is clearly an attempt by the judge to summarise his main conclusions, the problem with it is that it is not clear from the rest of the decision which parts of the appellant's account of his political activity he did not accept.
20. The judge accepted at paragraph 35 that the appellant was a member of the HDP, whereas the respondent only accepted that he was a low-level supporter. The distinction between member and supporter might have been an inadvertent slip of the pen which would not amount to a material error. However, the reader does not know what it is the judge did not accept about the claim. The discussion of the appellant's activities in paragraph 32 is in the context of the assessment of the report of Dr Hajioff. There are no clear adverse findings and at least some parts of the claim to have distributed leaflets and participated in demonstrations appear to have been accepted. The judge was provided with some photographs of the appellant engaging in political activities.
21. Clearly, it is necessary to make clear findings as to the extent of the appellant's activities in order to be able to make a safe assessment of the risk on return. I consider the judge's failure to do so led to material error rendering the decision unsafe.
22. I am also troubled by paragraph 33, where the judge states, "... *given the appellant's general unreliability as a witness and because he left Turkey with an ID card, there is no good reason to suggest that he did so illegally. His assertion, in circumstances where his party has representation in parliament that it was an offence to be a member of the HDP, defies belief.*"

23. The representatives were both unaware of any record of the appellant claiming that membership of the HDP was an offence. I was not invited to read the judge's handwritten notes of the evidence in his record of the proceedings given Ms Panagiotopoulou had represented the appellant in the First-tier Tribunal.
24. If the appellant had made that claim in defiance of the obvious fact that the HDP is not proscribed, it could conceivably have been a relevant factor in the judge's credibility assessment. However, absent other clear reasons, it is not possible to understand why the judge found the appellant's evidence was generally unreliable. Further explanation is required.
25. The appellant's appeal is allowed to the extent the decision of the First-tier Tribunal is set aside. The outcome of the appeal on its merits remains unresolved. Clear findings of fact must be made on key aspects of the claim in order for the risk on return to be assessed safely. There are no preserved findings.
26. Having considered the Senior President's Practice Direction of 15 September 2012, I make an order under section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007.

NOTICE OF DECISION

The Judge of the First-tier Tribunal made a material error of law and his decision dismissing the appeal is set aside. **The appeal is remitted to the First-tier Tribunal for a hearing de novo on protection issues.**

Anonymity

The First-tier Tribunal made an anonymity direction which I continue.

Signed

Date 8 May 2019



Deputy Upper Tribunal Judge Froom