



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

Appeal Number: PA/01051/2018

THE IMMIGRATION ACTS

Heard at Field House

On 17th May 2018

**Decision & Reasons
Promulgated
On 23rd May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

[H D]

(~~ANONYMITY DIRECTION NOT MADE~~)

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Panagiotopoulou, Counsel instructed by Montague Solicitors

For the Respondent: Mr Jarvis, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Mace made following a hearing at Hatton Cross on 20th February 2018.

Background

2. The appellant is a citizen of Turkey born on 2nd January 1989. He says that he arrived in the UK on 13th December 2016 and he claimed asylum on

15th December 2016. He was refused on 4th January 2018 and it is this refusal which was the subject of the appeal before Judge Mace.

3. It was not disputed that the appellant is of Kurdish ethnicity from the Alevi faith from the southeast of Turkey. The judge outlined her reasons for finding that the appellant was not credible in claiming that he had been detained and ill-treated as a consequence of his involvement with the DTP.
4. The appellant then sought permission to appeal against the judge's decision challenging a number of her adverse credibility findings. Permission to appeal was granted by Judge Holmes on 5th April 2018.

Submissions

5. Ms Panagiotopoulou submitted that the judge did not have regard to the totality of the evidence when reaching her decision. Specifically she did not refer to the appellant's appeal statement when counting it against the appellant that he had incorrectly identified the dates of the massacres at Maras and Civas at interview. The appellant's case was that he was stressed and confused but after the 30 minute break had composed himself. The Immigration Judge did not give weight to the appellant's explanation.
6. The judge highlighted inconsistencies in the appellant's account of his detentions at interview but in doing so failed to have regard to his appeal statement in which he clarified the dates of his detentions. Moreover at paragraph 21 she held it against the appellant that he had made a visit application to come to the UK without any logical reason. There was no inconsistency in the appellant seeking to leave Turkey by making an application at the British Embassy.
7. Finally, the judge had not taken any account of her submissions in relation to the country guidance case of IK [2004] UKIAT 00312 CG and had accordingly not lawfully assessed the issue of risk on return. This appellant had a number of risk factors, namely his Kurdish ethnicity, Alevi faith, the fact that he was an undocumented young single male from southeast Turkey who had been absent for a period of time with family connections to the DTP; they had not properly been assessed. It was not disputed that the appellant was a sympathiser with the DTP cause and any association with the PKK was a major risk factor on return.
8. Mr Jarvis defended the determination and submitted that the judge had made a number of powerful adverse findings which were not challenged in the grounds. The witness statement had been mentioned at paragraph 19 of the determination and it was wrong to suggest that the judge had not properly understood the appellant's case. She was entitled to reject the appellant's explanation that he had been stressed. Overall the determination was a clear assessment of the appellant's claim and she was entitled to reject it for the reasons which she gave.

9. So far as IK was concerned the lack of reference to the country guidance case was immaterial because, on the judge's sustainable findings, the appellant would not be in a risk category identified in the country guidance.

Findings and Conclusions

10. I am satisfied that this is a sustainable determination. Her findings and conclusions were plainly open to her.
11. First, it is right to say that a number of her findings are unchallenged. She observed that, at the appellant's initial interview on 15th December 2016, he was asked to explain the reasons why he could not return to his own home country. He said that his cousin had been killed by the police because she was Kurdish and the authorities were looking to take him and torture him because he was Kurdish and that this had last happened on 17th September 2016. When asked whether he had ever been detained he said just in Turkey for being Kurdish. He said that he had never been involved with any political organisation.
12. However six months later, at the substantive asylum interview, the appellant said that he had been arrested as a terrorist and had been distributing leaflets and had been involved with the DTP since 2009. It was put to him that he had failed to mention any political involvement in his initial interview and he explained that the agent had told him that he should answer that at his official interview which would be later on. He did not know what would happen.
13. The judge set out clearly why she found this explanation to be lacking in credibility. She found it difficult to understand why the appellant would fear that he would be sent back for mentioning political involvement when this was the basis of his asylum claim.
14. There was a further inconsistency between the initial interview and the account given later. The appellant initially stated that his cousin had been killed and all of his family had been affected and left their town. At the hearing he said that his family were still in the village and always had been.
15. Moreover there is no challenge to the judge's finding that, whilst it was not disputed that the killing of one [DD] had taken place, the appellant had been unable to produce any documents to show that he was related to her as he claimed. There was nothing from any relative or anyone from the appellant's village by way of evidence. He had said that he had parents, cousins, nieces and nephews in his home village as well as siblings with whom he was in contact. It was open to the judge to remark that the appellant had left the country using an agent in December 2016 when his family were still in the village and therefore in a position to send documents at the time and since.

16. It is not true to say that the judge did not make reference to the appeal statement. She did so in paragraph 19. She was, for example, fully aware of the appellant's explanation for the confusion in the dates of the massacres at Maras and Civas, to which she referred. However, as she said, the appellant claimed that he had been attending demonstrations since 2009 on an annual basis for the anniversaries of the events. Not only had he attended them but he had distributed leaflets in order to organise support. They were well-known events which were commemorated every year.
17. The judge was also entitled to hold it against the appellant that there were inconsistencies in the accounts given by him of his detentions, particularly in relation to one where he said that he was detained at a protest in 2014 which was before the Suruc massacre had even taken place. There were also discrepancies in his claims of how long he was detained and whether he was tortured.
18. Finally the judge was entitled to observe that the appellant was discrepant in his evidence that he could not move to another city when he had been able to travel to the British Embassy to apply for a visa using false documents. Moreover the appellant said that there was a man in the embassy who could organise the visa when in fact it was rejected because false documents were used, which is inconsistent.
19. The judge's credibility findings were open to her.
20. So far as the IK point is concerned it is clear from the skeleton argument relied on by his representative at the hearing that it was not being said that the appellant would be at risk solely on account of his Kurdish ethnicity, the fact that he came from the southeast of Turkey and was of the Alevi faith.
21. At paragraph 13 of the skeleton argument it says:

"The appellant's case is that it is the cumulative effect of his Kurdish ethnicity, area of origin, involvement with and support for the HDP, family involvement with pro Kurdish parties, perceived assistance to the PKK, Alevi faith and his absence from Turkey will place him at risk on return particularly in the current climate in Turkey and following the failed coup attempt on 15th July 2016. There has been continuing interest as against the appellant with raids at his family home."
22. At paragraph 22:

"It is submitted that upon investigation of such records the appellant's previous encounters with the authorities, support for the HDP and suspected support for the PKK will come to the fore. In those circumstances it is submitted that upon investigation of his particulars the appellant will be perceived as a separatist and will be transferred

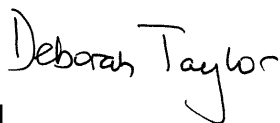
to the anti terror branch where the risk of ill treatment/persecution remains high.”

23. It is quite clear that the case was put on the basis not only of the appellant’s area of origin, his ethnicity and faith, but also his claimed suspected history of association with an illegal organisation. The judge was entitled to reject the appellant’s account of such history in its entirety. Accordingly the lack of engagement with the country guidance case of IK is not material.

Notice of Decision

The original judge did not err in law. Her decision stands. The appellant’s appeal is dismissed.

No anonymity direction is made.



Signed

Date 21 May 2018

Deputy Upper Tribunal Judge Taylor