



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: PA/04853/2018

THE IMMIGRATION ACTS

Heard at Field House

On 18 September 2018

**Decision & Reasons
Promulgated**

On 25 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR OO
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

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

For the Respondent: Mr Lyndsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (the UT Procedure Rules) I make an order prohibiting the disclosure or publication of specified documents or information relating to the proceedings or of any matter likely to lead members of the public to

identify any person whom the Upper Tribunal considers should not be identified. The effect of such an “anonymity order” may therefore be to prohibit anyone (not merely the parties in the case) from disclosing relevant information. Breach of the order may be punishable as a contempt of court.

2. The appellant is a national of Turkey. He had left Turkey in October 2011 and travelled to France where he claimed asylum on October 25, 2011. He lost his appeal and returned to Turkey in 2013 where he remained until June 2, 2016. The appellant clandestinely entered the United Kingdom on June 7, 2016 and claimed asylum.
3. The respondent refused his application in a decision dated March 9, 2018 under paragraphs 336 and 339F HC 395.
4. The appellant lodged grounds of appeal on under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. His appeal came before Judges of the First-tier Tribunal Nightingale and SH Smith (hereinafter called “the Judges”) on May 16, 2018 and in a decision promulgated on June 27, 2018 the Judges dismissed his appeal on all grounds.
5. The appellant appealed this decision on July 11, 2018. The appellant argued that the Judges’ decision was flawed because their positive findings particularly in paragraphs 35, 45 and 62 contradicted their ultimate conclusion.
6. Permission to appeal was granted by Judge of the First-tier Tribunal Lambert on August 1, 2018 as she found it arguable there was an inconsistency between the Judges’ finding at paragraph 62 in light of the fact the Judges had accepted the appellant had given a credible and consistent account, supported by witnesses, in respect of his alleged detention and previous activities in Turkey as set out in paragraphs 66(iii) and (iv) of the Judges’ decision.

SUBMISSIONS

7. Ms Panagiotopoulou adopted her grounds of appeal that had been submitted with this application. She highlighted the fact that the Judges had accepted that the appellant was both a credible and consistent witness, was a supporter of the HDP and other political parties and suffered with post-traumatic stress disorder (PTSD).
8. Ms Panagiotopoulou submitted:
 - (a) The Judges had misunderstood the evidence provided by the appellant’s maternal cousin and failed to make material findings on aspects his evidence or put questions to the witness about the appellant’s family’s political profile. The Judges found the cousin’s evidence did not advance the appellant’s case in any material respect but overlooked the fact that cousin was a maternal cousin and the

problems the appellant was describing were on his father's side of the family.

- (b) The Judges failed to give adequate reasons for only finding the appellant was merely a supporter of both the BDP and DTP whereas the appellant claimed and had provided some evidence to show that he was a member.
 - (c) The Judges erred by making an adverse finding on his activities in France because the appellant had never claimed to have been politically active in France.
 - (d) The Judges erred at paragraph 48 of the decision when considering the court documents as they should have considered those documents in the round and not in isolation. At paragraph 49 of the decision the Judges made a negative finding on the arrest warrant because none could be seen on a search engine but the Judges overlooked the fact that he claimed he had been unofficially detained.
 - (e) The Judges placed too much weight on the appellant's screening interview and overlooked the medical problems and the intention of the screening interview.
 - (f) These errors contributed to an inadequate assessment of the risk factors set out in IK (Returnees-Records-IFA) Turkey CG [2004] UKIAT 00312.
9. Mr Lyndsay opposed the application and submitted that the findings made by the Judges had been opened to them. He submitted that the cousin's evidence was self-serving and that the documents were not reliable for the reasons given by the Judges and the Judges were entitled to have expected the appellant to have given a consistent timeline because he had previously had a claim rejected for protection in France. He submitted that all issues had been considered and this was not a case where there was any material error.

FINDINGS

- 10. In considering the appellant's appeal the Judges were aware of the appellant's vulnerability. Their decision confirmed that during cross examination they intervened where they felt it was necessary.
- 11. At paragraph 34 of their decision, the Judges accepted that in broad terms the appellant's account of detention in 2015 and 2016 was consistent with country evidence concerning what was happening at that time. The Judges also accepted the appellant had a detailed knowledge of Kurdish political parties and identified that the central issue was whether his case was credible.
- 12. Ms Panagiotopoulou's challenges relate to the Judges' approach and assessment of the evidence.
- 13. Ms Panagiotopoulou raised an issue in her submissions that the Judges had failed to understand the relevance of the family tree that had been submitted to the Tribunal but it appeared conceded by Ms

Panagiotopoulou that the family tree took the matter no further because the respondent accepted during the hearing that the appellant was related to his cousin, as claimed, and I agree with their conclusion that the family tree consequently did not take the appellant's claim any further.

14. Ms Panagiotopoulou addressed me at some length both in her grounds and oral submissions regarding the Judges' approach to the evidence provided by the appellant's cousin. She submitted that there was an error because the Judges placed weight on the fact that the cousin were silent as to his family's political activities and they stated, "we are surprised by this omission given the centrality of the appellant's family's political activities to his case and the fact that Mr S himself enjoys refugee status for, in his words, 'similar reasons'". The Judges went on to state that they found it telling the witness failed to mention the family's profile. Mr Lyndsay in his oral submissions stated the cousin's evidence was self-serving and the findings in paragraph 42 of the Judges' decision was open to them.
15. The argument being advanced by Ms Panagiotopoulou is that the Judges erred in their approach to this evidence, but the Judges were clearly aware that the appellant and the witness were maternal cousins because the Judges recorded in paragraph 41 of the decision that "their mothers or sisters". They also recorded the cousin's evidence to be that their respective families lived very close to each other in Turkey and I am satisfied the Judges were entitled to have the reservations expressed in paragraph 41 of the decision because if the families lived as close as was claimed, were related as claimed and the cousin had similar problems then it seems reasonably likely the cousin would have known about the appellant's family's problems and his failure to address that issue was a factor they could take into account when assessing the cousin's evidence. The position may have been different if their families did not live close to each other or had no contact but that was not the argument advanced.
16. Ms Panagiotopoulou has criticised the Judges for failing to find the appellant was a member of certain political parties. They addressed this issue between paragraphs 43 and 46 of their decision. The Judges had regard to his claimed activities and his claimed membership of political groups and went on to consider documents submitted to the respondent regarding his membership of the BDP.
17. The Judges criticised the lack of translation of the document found at page D3 in the respondent's bundle, but Ms Panagiotopoulou pointed out that there was a translation of this in the appellant's bundle at page 22 indicating that he was a member of the BDP. However, this was not a case where the Judges ignored this claim because at paragraph 45 of the decision they stated the document had little probative value when assessing the central aspect of his case that he was a "politically active HDP supporter whose profile led to his detention on two occasions".
18. Ms Panagiotopoulou also submitted that the Judges were wrong to make reference to the fact he had not been politically active during his four

years in France in circumstances because he had not claimed to have been politically active. Ms Panagiotopoulou's submission that he did not claim to be politically active in France was accepted by the Judges at paragraph 46.

19. Ms Panagiotopoulou challenged the Judges' approach to the arrest warrant and indictment. In submissions, Ms Panagiotopoulou argued his detention had been unofficial and the argument advanced was that there would therefore be no records available but if that was the case then why would there be an arrest warrant or indictment issued in the first place? The Judges noted the appellant had searched for his own records using the online facility but had found nothing and in the circumstances the Judges' finding there were no outstanding warrants or indictments was a finding open to them.
20. The Judges considered the appellant's claims of detention and torture between paragraphs 50 and 58 of their decision. They had regard to his vulnerability and mental health difficulties when assessing the fact he had given different versions of events. They noted that some of the earlier accounts given in his interviews differed from the account he gave at the hearing. They had regard to the fact that when he attended his screening interview he would have been tired and it would have been a stressful time for him. The finding in paragraph 51 was open to the Judges and they gave reasons for that finding from paragraph 52 onwards of their decision.
21. Contrary to Ms Panagiotopoulou's submissions the adverse findings were not based simply on the initial screening interview. The subsequent inconsistencies compounded concerns that they had over the screening interview. The points now advanced by Ms Panagiotopoulou were similarly advanced before the First-tier Tribunal.
22. This was an extremely detailed decision where considerable time was spent assessing numerous facets of the appellant's claims and I am satisfied that the appropriate weight was given to all of the issues now raised by Ms Panagiotopoulou.
23. Having made their findings, summarised in paragraph 66 of the decision, the Judges went on to consider whether the appellant would be at risk. They had regard to both the country evidence and the decision of IK and their findings were open to them.
24. I am satisfied that none of the matters either singularly or collectively, advanced by Ms Panagiotopoulou, disclose an error in law.

DECISION

25. There is no error in law I uphold the original decision.

Signed

Date 23/09/2018

A handwritten signature in black ink, appearing to read "SPAR" with a flourish underneath.

Deputy Upper Tribunal Judge Alis

FEE AWARD
TO THE RESPONDENT

I do not make a fee award as I have dismissed the appeal.

Signed

Date 23/09/2018

A handwritten signature in black ink, appearing to read "SPALIS". The signature is written in a cursive style with a long horizontal stroke at the end.

Deputy Upper Tribunal Judge Alis