



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

Appeal Number: PA/04372/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 18th February 2019**

**Decision & Reasons
Promulgated
On 7th March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

**MR E.K.
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Sandhu (Solicitor)

For the Respondent: Mr Duffy (Senior Home Office Presenting Officer)

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity direction was not made by the First-tier Tribunal. However as this is a protection claim, I consider it appropriate to do so

DECISION AND REASONS

1. The Appellant has been granted permission to appeal the decision of Judge of the First-tier Tribunal Paul (hereinafter “the judge”) who in a decision promulgated on 28th December 2018 dismissed his appeal against the Respondent’s decision of 15th March 2018 to refuse his protection claim.

Background

2. The Appellant is a citizen of Turkey. He claimed international protection on the grounds that he will be at real risk of persecution and ill-treatment in Turkey on account of his Kurdish ethnicity and his support for the People’s Democratic Party (HDP).
3. In summary, his claim is that he was arrested in November 2014 and detained for three days on account of HDP activity. He ceased activity for the HDP at that time but started again in 2016. In July 2017 the authorities came to his home and arrested and detained him for two days. He was released on condition that he provided information about the HDP to the police on a weekly basis. He did so on a number of occasions before leaving the country in August 2017.
4. He then travelled to the UK via Sweden. He claims that whilst in the UK he has participated in demonstrations regarding the conflict in Afrin. Furthermore, he was due to report for military service on 1st January 2016, and his failure to do so means he is an absconder.
5. The judge after hearing evidence from the Appellant dismissed the appeal.

Permission to Appeal

6. The grounds seeking permission took issue with the judge’s decision, essentially saying that the Appellant had been denied a fair hearing in that the judge had not applied anxious scrutiny to his decision when analysing the evidence before him. The grounds went on to particularise that the judge had simply failed to take into account relevant parts of the Appellant’s story and failure to do so amounted to a significant error of law. Permission to appeal was granted in the following terms:

“It is arguable that the Judge has misdirected herself by failing to (a) give any analysis of findings about the two arrests that the Appellant underwent on 1 November, 2014 and 24 July, 2017; (b) take into account the Appellant’s family history of support for left-wing politics and the fact that the Appellant was arrested at home; (c) make any findings concerning the Appellant’s political activity in the UK in that he is an active member of HDP which means he is perceived as a left-wing Kurdish supporter and PKK sympathiser and (d) by failing to give

any adequate analysis of the **IK** risk factors and the current situation in Turkey re the current state of emergency which will amount to questioning of the Appellant on return and who is likely to be detained on arrival in Turkey and his background checked.”

7. Thus the matter comes before me to determine whether the decision of the judge discloses such material error, that the decision must be set aside and re-made.

Decision on Error of Law

8. Before me Mr Sandhu appeared for the Appellant and Mr Duffy for the Respondent. Mr Sandhu’s submissions relied upon the grounds seeking permission which point out that the judge’s decision is brief and the findings failed to deal with evidence which was before her. The credibility assessment therefore, could not be said to be a fair one. The matter should therefore be set aside and remitted to the First-tier Tribunal for a fresh hearing.
9. Mr Duffy on behalf of the Respondent, whilst not formally conceding the matter, acknowledged that there was a lack of findings and reasons on evidence which had been presented on the Appellant’s behalf.
10. After hearing from the representatives, I announced my decision that I was satisfied that the judge had erred in law and I now give my reasons for this. I accept that the judge failed to show that she had taken into account and considered material evidence which had been put forward on the Appellant’s behalf. This included a failure to give findings about the two arrests that the Appellant said he underwent, a failure to take into account the Appellant’s claimed family history of support for left-wing politics, and a failure to make findings concerning the Appellant’s political activity in the UK in that he claims to be an active member of HDP which means he would be perceived as a left-wing Kurdish supporter and PKK sympathiser. Thus it follows that there is a failure to give adequate analysis of the **IK** risk factors and the current situation in Turkey. These are material errors.
11. For all the above reasons, I set aside the decision of the FtT. The effect of my decision is that the appeal will need to be determined on the merits on all issues. Nothing is preserved from the original decision.
12. In view of the nature and extent of the judicial fact-finding which is necessary, I agree with the Representatives that a remittal to the First-tier Tribunal is the right course of action in this case.

Notice of Decision

The decision of the First-tier Tribunal involved the making of errors on points of law such that the decision is set aside in its entirety. This matter is remitted to the First-tier Tribunal for a fresh hearing on all issues and is to be heard by a judge other than Judge of the First-tier Tribunal N M Paul.

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 his 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.

Signed
2019

C E Roberts

Date

05

March

Deputy Upper Tribunal Judge Roberts