



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

Appeal Number: AA 00044 2014

THE IMMIGRATION ACTS

**Heard at Field House
On 24 April 2014**

**Date Sent
On 12 May 2014**
.....

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MD

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr N Bramble, Senior Home Office Presenting Officer

For the Respondent: Mr R Bartram, Counsel instructed by Migrant Law Partnership

DETERMINATION AND REASONS

1. The respondent to this appeal, hereinafter “the claimant”, is a Turkish national born in 1995. It follows that although he has achieved his majority he is only 19 years old and he is an asylum seeker. In the circumstances I make an anonymity direction pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Unless and until the Tribunal or court directs otherwise the claimant is granted anonymity. No part of these proceedings shall directly or indirectly identify him or any member of his family and failure to comply with these directions could lead to contempt of court proceedings.
2. The claimant’s appeal against a decision to remove him from the United Kingdom was allowed by the First-tier Tribunal on the grounds that the claimant is a refugee. This decision is challenged by the appellant, hereinafter “the Secretary of State”, who maintains, in summary, that the First-tier Tribunal’s decision was reasoned inadequately.

3. In order to understand the determination I begin by considering the detailed Reasons for Refusal Letter dated 19 April 2011 prepared by the Secretary of State.
4. This noted, directly, that the claimant sought asylum because he feared mistreatment due to his race and/or political opinions and claimed humanitarian protection because he feared that in the event of his return he would risk unlawful killing, torture or inhuman or degrading treatment or punishment.
5. In his screening interview he identified himself as a Turkish national of Kurdish ethnicity. He said his father is a farmer that had been “missing” since October 2010. His mother is a housewife and farmer and lived in the claimant’s home village with his brothers and sisters.
6. The claimant said that he became a member of the DTP in 2008 and the BDP in 2010. His father had been a member of the BDP.
7. He claimed to have been detained in Turkey on three occasions because of his political involvement. He was detained by the gendarmerie in his village in January 2009, by a gendarmerie special team in February 2010 for two days and by the police in Antep for two days on 25 December 2010.
8. He feared the gendarmerie would kill him if he returned.
9. He said he entered the United Kingdom on a lorry in January 2011 and claimed asylum about two weeks later.
10. The Secretary of State accepted that the claimant is a Turkish national of Kurdish ethnicity.
11. According to the Reasons for Refusal Letter the claimant did not make a good impression in his interview. For example he claimed to have been interested in politics firstly in 2008 when he was aged 14 but if he was in fact born in 1995 as he claimed he would not have been 14 years old in 2008.
12. His interest in Kurdish politics was that of all Kurdish young people who were under pressure from the gendarmerie. He was not able to indicate any of the policies advanced by the DTP in 2008 when he had started to support them. He said wrongly that Abdullah Öcalan was the leader of the BDP whereas Öcalan was the leader of the PKK and Demirtas was the leader of the BDP. He said that the BDP was founded in 2009 whereas it was founded in 2008 and that its headquarters are in Elbistan and Kurdistan when the background evidence shows that it was in Ankara.
13. The claimant said that he knew the DTP had closed in 2009 and the BDP was then formed but he did not know the reason for the DTP closing. However the background material shows that the DTP was closed by order of the constitutional court in December 2009 and the Secretary of State took the view that even a young person would have had some understanding of the reason behind the closure of the DTP if, as he claimed, he was genuinely interested in Kurdish politics.
14. The Secretary of State was similarly unimpressed by the claimant’s inability to remember the approximate date of the most recent presidential elections or even

if there were elections at a time when he supported firstly the DTP and later the BDP.

15. Putting everything together the Secretary of State did not believe that the claimant had been involved in any kind of political activity or that his father was “missing” as claimed.
16. At paragraph 23 of the Reasons for Refusal Letter the Secretary of State explained that she did not believe that the claimant had been detained by the gendarmerie, the gendarmerie special team or the police as claimed. This decision was based on the general adverse findings about the claimant’s case and the additional observation that the claimant had said during his screening interview that he had only ever had his fingerprints taken when he claimed asylum whereas he said on another occasion that his identity was checked and his fingerprints were taken on each occasion that he was detained.
17. The Secretary of State found the claimant’s evidence to have been released on signing a document saying that his family would be harmed if he did not cooperate with the authorities was not credible.
18. The claimant said that his release from custody was assisted by his maternal uncle paying a bribe. He said that his maternal uncle had supported the PKK but claimed not to know if his uncle had ever been detained for political reasons. The Secretary of State did not believe that claim given that it was the claimant’s case that his father had discussed political problems with him and his uncle lived in the village. It was also thought incredible that the police would accept a bribe from a PKK activist.
19. The Secretary of State also thought it a discrepancy in the claimant’s account that he said that he had promised the police that he would be an informer for them but it was the gendarmerie that came to his house asking for information. Neither could the Secretary of State make any sense of the claimant’s contention that his uncle had arranged for him to stay in Antep when it was not safe for the claimant to return home when, according to the claimant, he had only recently been ill-treated by the police in Antep.
20. The Secretary of State did not accept that the claimant had shown that he came within any of the risk categories identified in **IA, HC, KD, RO, HG (Risk, guidelines, separatist) Turkey CG [2003] UKIAT 00034** and there would be no risk associated with his return because he had no political profile. The Secretary of State noted the guidance given in **IK (Returnees – records – IFA) Turkey CG [2004] UKIAT 00312**, but decided that the claimant’s own case did not create a risk. He had never been charged with any offence or that a warrant existed for his arrest. It follows, from **IK**, that the GBTS system would have nothing recorded against him to attract attention in the event of his return. In the circumstances there was nothing to stop him passing through border controls in Turkey and establishing himself away from his home area if that is what he wanted to do.
21. At paragraph 42 of the refusal letter the Secretary of State noted, again following **IK**, that although the claimant might attract attention in the event of his being returned on an emergency travel document and there being no record of a lawful

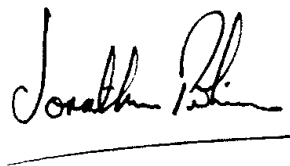
departure there was no real risk of his being ill-treated. At most there was a risk of an extended period of questioning to establish his circumstance. Clearly if there was anything to hide this could be a dangerous time for the claimant but the Secretary of State did not believe there was anything in his past to be hidden.

22. The Secretary of State saw no reason to grant the claimant humanitarian protection or to allow the application on human rights grounds for other reasons. The First-tier Tribunal noted that the claimant's "further application" had not submitted any evidence to challenge the refusal letter of 19 April 2011.
23. The First-tier Tribunal Judge noted that the "central issue in this appeal on the lower standard of proof, is whether the [claimant] is perceived by the Turkish authorities to be a supporter of the PKK".
24. The First-tier Tribunal Judge accepted that the claimant was Kurdish having heard him name a Kurdish newspaper and three Kurdish television channels as well as recognising Newroz on 21 March as the Kurdish New Year celebration day.
25. At paragraph 10 of the determination the First-tier Tribunal Judge appears to excuse the inconsistencies in the account because of the claimant's youth. Rather he found that the claimant was one of many youngsters in a Kurdish village who was arrested with others.
26. The judge noted background evidence showing that since 2012 the armed conflict had become worse and that pro-Kurdish parties, even when apparently lawful, were regarded as terrorist organisations and the supporters beaten.
27. The First-tier Tribunal Judge considered the country guidance cases and decided that in the event of his return the claimant would attract attention because he would be returned on an emergency document and had not left the country lawfully. Unlike the respondent, the First-tier Tribunal Judge found the claimant had been detained and would have some sort of profile that could come to light in the event of enquiries being made and this was the basis of the risk which led to his allowing the appeal.
28. The grounds complain that the determination does not give reasons at all but merely records the account and decides that the claimant was telling the truth.
29. Mr Bartram submitted that the First-tier Tribunal Judge was under no duty to consider every point raised in the refusal letter. The First-tier Tribunal Judge had clearly considered the claimant's statement of 28 January 2014 where he commented specifically on the Reasons for Refusal Letter and made the point which was clearly accepted by the judge that he was a young person from Turkey who had no detailed understanding of the policies of the pro-Kurdish parties that he supported.
30. Mr Bartram did present his arguments most attractively but I am not persuaded by them.
31. The Secretary of State gave very detailed reasons for disbelieving the claimant in what was clearly a considered refusal letter. The claimant attempted to rebut them in his second statement and gave detailed responses. I am satisfied that more consideration should have been given to both the respondent's observations

and the claimant's answers. The rather broad-brush approach of the First-tier Tribunal Judge that the claimant was too young to be bothered does not deal adequately with all of the points raised.

32. I hope that I would be quick to say if the Secretary of State was making tedious and unreasonable criticisms of the determination that she did not like. This is not the case here. The reasons given are not adequate to show a proper appreciation of the case before the Tribunal and although I realise this would be disappointing for the claimant I have to say the determination is just not sufficiently detailed to be good enough in law.
33. Secondly the finding that the claimant would be at risk now because of his having been in trouble in the past is not reasoned sufficiently. I do not understand how the First-tier Tribunal Judge has applied **IK** and reached the conclusion that he did. In **IK** we decided that a person would not be at risk if that person had not been arrested. Clearly the judge accepts the claimant has been arrested but has not explained properly his approach to **IK**.
34. As I always do on reasons challenges I sat back and reflected a little. A determination does not have to be beyond fair criticism to be satisfactory.
35. I have reminded myself that the judge's reasons can be understood. He did believe the claimant but I do not know why he believed him in the light of the criticisms made by the respondent.
36. It follows therefore that I have to decide the determination is unlawful because it is reasoned inadequately.
37. Before me the parties agreed that if that was my finding the case could not be repaired and I set aside the decision of the First-tier Tribunal and order the case be decided again by the First-tier Tribunal.

Signed
Jonathan Perkins
Judge of the Upper Tribunal

A handwritten signature in black ink, appearing to read 'Jonathan Perkins', written over a horizontal line.

Dated 2 May 2014