



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER**

Case No.: UI-2024-000210

First-tier Tribunal Nos:
PA/55991/2021
IA/17868/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 10th September 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**ES (TURKEY)
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S. Latimer, Legal Representative, Seren Legal Practice
For the Respondent: Ms C. Newton, Senior Home Office Presenting Officer

Heard at Field House on 20 August 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court

DECISION AND REASONS

1. The appellant appeals from the decision of First-tier Tribunal Judge Le Grys promulgated on 13 November 2023 (“the Decision”). By the Decision, Judge Le Grys dismissed the appellant’s appeal against the decision of the Secretary of State made on 15 July 2021 to refuse his protection claim made on 7 November 2019.

Relevant Background

2. The appellant is a national of Turkey, whose date of birth is 1 June 1993. His claim is that his problems in Turkey began in 2019 when the police raided his family home on account of his perceived connection with the Gulen Movement, in respect of which there had been a crackdown by the authorities following a coup in 2016. He was never a follower or supporter of the movement but he was a sympathiser and he had some limited involvement with the movement before it was outlawed in 2016. The appellant was staying with his sister at the time of the raid, and his father arranged for a taxi to take him to the village of Bazman where he stayed in hiding with a relative for nearly six months until his father found an agent to take him abroad.
3. In the refusal decision, the respondent did not accept that the appellant had problems with the Turkish authorities because of his suspected support for the Gulen Movement. This was because there were various internal and external inconsistencies in his account including the fact that the arrest warrant and the Public Prosecution records that he had tendered in support of his claim contained dates which were inconsistent with the date he had given for when he said that the police had first raided the family home.

The Decision of the First-tier Tribunal

4. The appellant’s appeal came before Judge Le Grys sitting at Newport on 8 November 2023. Both parties were legally represented. The Judge received oral evidence from the appellant who was cross-examined and answered some questions from the Judge.
5. One of the reasons the Judge gave in the Decision for finding the appellant not credible was that he did not claim to have heard anything from his friends or those he was staying with prior to the 2016 coup to suggest that they had come to the attention of the authorities or were being targeted, such that might give rise to an inference that he could be falling under suspicion by reason of his connection to them (para 23).
6. Another reason given by the Judge for finding the appellant not credible was that the appellant did not describe himself as being in hiding in Bazman, but only that he was living there with a relative who had a different surname (para 28).

The Grounds of Appeal

7. The grounds of appeal to the Upper Tribunal were settled by Alex Coyte of Seren Legal Practice who had represented the appellant at the hearing in the First-tier Tribunal.
8. Ground 1 was that the Judge had failed to take account of the respondent's background evidence in finding that the appellant's association with the Gulen Movement prior to it being outlawed would mean that he was unlikely to be of interest to the Turkish authorities.
9. Ground 2 was that the Judge had applied too high a standard of proof and had compounded this error by basing adverse credibility findings on factual errors.
10. Ground 3 was that the Judge's finding on the probative value of the arrest warrant was ambiguous, and hence unlawful, following *Starkey* [2021] EWCA Civ 421.

The Reasons for the Grant of Permission to Appeal

11. On 19 January 2024 First-tier Tribunal Judge G. Clarke granted permission to appeal on all grounds, but singled out Ground 2 as being the most meritorious. The Judge had made factual errors at paras 23 and 28 of the Decision, and these were arguable errors of law because they informed the Judge's findings on risk on return.

The Hearing in the Upper Tribunal

12. At the hearing before me to determine whether an error of law was made out, Ms Newton conceded at the outset that the Decision was vitiated by a material error of law for the reasons identified in the grant of permission.
13. Although her stance was not determinative of the issue, I was satisfied that the respondent's concession was reasonable and appropriate.
14. Accordingly, I ruled that a material error of law was made out, with written reasons to follow.

Discussion and Conclusions

15. The Judge made clear factual errors at paras 23 and 28 of the Decision. In interview at AIR 75 and 76 the appellant gave the names of two friends of his who he said had been arrested for the same reason that the authorities had been trying to arrest him. The appellant also explicitly stated that he went into hiding in a village called Bazman.
16. The factual errors in paras 23 and 28 were material as they formed part of the evidential foundation for the conclusion that the appellant was not credible in his account of being targeted by the authorities in 2019 on account of his past association with the Gulen Movement, and they also

formed part of the evidential foundation for the finding that the appellant would not be at risk on return.

17. Accordingly, the Decision is unsafe and it must be set aside in its entirety.
18. I have carefully considered the venue of any rehearing, taking into account the submissions of the representatives. Applying *AEB* [2022] EWCA Civ 1512 and *Begum* (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC), I have considered whether to retain the matter for remaking in the Upper Tribunal, in line with the general principle set out in statement 7 of the Senior President's Practice Statement.
19. I consider that it would be unfair for either party to be unable to avail themselves of the two-tier decision-making process and I therefore remit the appeal to the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal contains an error of law, and accordingly the decision is set aside in its entirety, with none of the findings of fact being preserved.

This appeal is remitted to the First-tier Tribunal at Newport for a fresh hearing before any Judge apart from Judge Le Grys

Andrew Monson
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
30 August 2024

