



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Appeal No: No: UI-2024-001242

First-tier Tribunal No:
PA/52988/2023
LP/02952/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 16 August 2024**

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

**IAY
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Lagunju, of Counsel, instructed by Howe & Co solicitors

For the Respondent: Mr N Wain, Senior Home Office Presenting Officer

Interpretation: Mr B Gozalan in the Turkish language

Heard at Field House on 6 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

Introduction

1. The appellant is a citizen of Turkey born in July 2006. He arrived in the UK on 11th June 2019, aged 12 years old. He claimed asylum on 26th June 2019, and was refused asylum in a decision of the respondent dated 28th April 2023, but was granted leave to remain until 2nd January 2024 due to being a minor. His appeal against the decision refusing his asylum and human rights claim was dismissed by First-tier Tribunal Judge Alis after a hearing on the 11th January 2024.
2. Permission to appeal was granted and a Panel of the Upper Tribunal found that the First-tier Tribunal had erred in law for the reasons set out in the decision appended at Annex A to this decision.
3. The matter now comes before me again to remake the appeal. At the end of the error of law hearing we informed the parties that we would preserve the following findings:
 - That the appellant is a Kurdish Alevi
 - That his family were supporters of HDP
 - That his parents were arrested, detained and released by the authorities as a result of being low level supporters of HDP
 - That his family sent him to the UK to live with his paternal aunt when he was 12 years old
 - The appellant did not leave Turkey as a draft evader
 - That the appellant has contact with some family in Turkey and his paternal aunt visited them in Summer 2023
 - The appellant has not engaged in pro-Kurdish activities in the UK
 - The appellant does not have a current Turkish passport
4. The appellant argues that he can succeed in this appeal on protection (asylum and Article 3 ECHR) grounds but Ms Lagunju confirmed that he did not pursue any separate Article 8 ECHR claim based on family or private life ties with the UK.
5. At the beginning of the hearing I noted that no party had placed any information before the Upper Tribunal about the 7.8 Mw earthquake that struck Turkey on 6th February 2023 with its epicentre just some 20 miles from Nurdagi. I informed the parties that I intended to take judicial notice of this tragic natural disaster as it seemed too large to ignore, although it might not be ultimately relevant to the outcome of the appeal. I therefore note that according to Wikipedia, relying upon information from the UN and Turkish government, 1.5 million people were left homeless

and more than 53,000 people died in Turkey. A Guardian newspaper article “No room for the dead as cemeteries in earthquake-hit Turkey and Syria fill up” dated 10th February 2023 provides information regarding Nurdagi commenting on the serious destruction in that town, the mass funerals taking place there and quotes an Imam as estimating that 40% of the people who lived in the town had died.

Evidence & Submissions – Remaking

6. In brief summary, aside from the preserved findings above, the key evidence of what the appellant says happened in Turkey is as follows. He was born and brought up in the Nurdagi in the district of Gaziantep. He attended primary and secondary school between 2013 and 2019. His parents were actively involved with the HDP going to meetings and celebrating Kurdish Newroz/ new year. He was taken to four or five meetings in the HDP building by his parents. As a result of this his parents had problems. They were stopped when travelling in a vehicle on one occasion and were often warned and or/ taken away by the police and told to stop going to the HDP building or they would be sent to prison or killed. His parents continued to go to the HDP building and be involved with the party but less often as a result of this harassment.
7. The appellant’s parents were detained on 15th March 2019. About 20 officers came to the house with weapons and wearing uniforms and masks. It was very frightening. The house was searched but the police found nothing, but they detained his parents. His parents were then released after three days having been interrogated and tortured. He is uncertain if they were charged with anything. His parents went into hiding with his younger siblings on 20th March 2019 as they were supposed to report to the police on a weekly basis. The appellant was taken to stay with his uncle, Irfan, two days after his parent’s release. On 25th March 2019 he and his uncle were interrogated at his uncle’s home about his parents whereabouts, and his uncle beaten with a truncheon by the police. The family decided it was not safe for him to remain in Turkey. He was taken by his uncle to Istanbul by car with his uncle driving at night and left with a friend there. The friend arranged for him to be taken to the UK. He was fingerprint matched at Coquelles in France trying to enter the UK on 20th April 2019. He arrived in the UK on 11th June 2019 travelling by lorry.
8. The appellant, who is now just 18 years old, believes that he will still be at risk on return to his home area in Turkey from the police because he believes that his parents and siblings are still in hiding. He is scared of being put in prison in Turkey. He might be able to live with an aunt or uncle in Nurdagi but he is scared of returning to Turkey. His parents disappeared in 2019 and he has heard nothing from them since. He accepts that he has other extended

family, aunts and step-aunts and uncles, in Turkey although he believes that some cousins and his uncle Irfan who assisted his escape died in the February 2023 earthquake. He said he did not know if he could live safely in another city in Turkey such as Istanbul but wants to stay with his friends in the UK.

9. In the UK he lived with his maternal aunt and her husband and children after his arrival in June 2019, but now lives with his maternal aunt's husband's cousin and his family. He said no relative attended the Upper Tribunal with him because they were looking after children. He informed the Tribunal that he attended school for a couple of months after arriving in the UK but then stopped attending due to Covid-19 and never went back. He says he was scared of the police in the UK so he did not go to school. His uncle in the UK did try to persuade him to go back to school but he refused. He says that he has neither attended college nor worked in the UK. He has no qualifications. He simply goes out with his friends, whom he met in his few months at school. He does not help out at home. He says that he can speak some English. He has not been politically active in the UK. He has not seen a doctor about any mental health problems but is very scared and upset about his parents disappearance and the prospect of being removed to Turkey.
10. Following a break in the appellant's evidence, when he became distressed and I gave him an opportunity to speak to his barrister outside of the Tribunal hearing room, I gave the appellant brief information about Modern Slavery and the option to seek protection via the National Referral Mechanism if he was being ill-treated or abused for instance by being forced to work for no or little reward in the UK. I informed him that his solicitors, Howe & Co, could assist him if he wished to do this and said that he could trust them. I emphasis that the appellant did not make a claim to be a victim of modern slavery, and in fact denied that anything untoward was happening to him in this country, but I was concerned by a number of features of his presentation. He had not been in education for the past five years, since the age of 13 years, and claimed not to be working either. He had not seen a doctor about any ill-health which would explain his school absence and could not adequately explain how he occupied his time. Whilst he said he could speak some English there was no evidence from the hearing that he could do this, and he used the Tribunal interpreter to provide his counsel with instructions in a short break in the proceedings. His presentation was of a person who is frightened by something. He made very little eye contact and was upset and at times, shaking and crying. I found it concerning that he had attended the Tribunal alone when he claimed to have a number of family members in the UK and given his only just having turned 18 years old and his state of distress. I found it concerning that despite his having apparently lived with them for the past five

years as a child of the family no family member was prepared to give a statement about what had happened in Turkey or the appellant's integration in the UK given his stated desire to remain here with his friends and stated fear of return to Turkey.

11. Mr Wain relied upon the reasons for refusal letter and the respondent's review in the context of the preserved findings. The only factual matter that remained undetermined was whether the appellant had been interrogated by the police, along with his uncle, about his parents whereabouts after they disappeared. Mr Wain argued that country of origin evidence must be used to assess whether this had happened given the appellant's young age at the time of the event. He argued that the country of origin evidence at 12.8.1 of the October 2023 CPIN on the HDP regarding treatment of HDP family members said nothing about consequences for child family members and neither did the 2019 Fact Finding Mission to Turkey at 3.3.1.
12. Having listened to Mr Wain's submissions I said that I found that in fact as stated at 3.3.1 – 3.3.4 of the Fact Finding Mission report it was entirely plausible that the police in Turkey would visit the homes of family members of persons whom they regarded as an opponent/criminal who had failed to report, and question the family members about the missing persons whereabouts. The appellant had not claimed to have been ill-treated himself, and the ill-treatment of his uncle was in keeping with what is said in the Fact Finding Mission evidence about threats and raids on the homes of relatives. As a result this issue was resolved in the appellant's favour, as I found that on the lower civil standard of proof the event took place, and so Ms Lagunju did not need to make submissions regard it.
13. Mr Wain then moved on to make submissions about risk on return for the appellant. He argued that the appellant was not at risk applying IA and Others (Risk-Guidelines-Separatist) Turkey CG [2003] UKIAT 34 and IK (draft evaders, records IFA) Turkey CG [2004] UKIAT 312 and the country of origin evidence. The appellant was not at risk as he was not politically active or showing any interest in any court case involving his parents or attending political rallies. The appellant was not himself subject to any arrests, detention or charges relating to the HDP whilst in Turkey, he had not been asked to be an informer, he was not a draft evader and he was not active politically on social media. He might suffer some sort of delay getting a passport but this would be the extent of his problems, and he had family in Nurdagi who could help him reintegrate. If he felt subjectively that he was in danger he could in any case relocate within Turkey to another city.
14. In submission for the appellant from Ms Lagunju it is argued that applying the country guidance in IA that the appellant would not

be safe on return to Turkey because the appellant would be at risk due to his connection with his parents who would be seen as supporters of Kurdish separatism and were supporters of the HDP, because he is Kurdish and Alevi, and lacks a passport. She attempted to argue that the appellant might now be a draft evader but following my intervention she accepted that she had no evidence that he had been called up, and so accepted that she could not argue this point.

15. Ms Lagunju argued that the appellant would be at risk at the border in Turkey because he could not be expected to lie about his family's involvement with the HDP and he could be transferred to be interrogated by the anti-terror police and ill-treated. Even if he were to be able to enter Turkey safely he would not be safe. The CPIN on HDP dated October 2023 at 12.4.1 indicates that low level HDP members are targeted, arrested and detained in Turkey, and that the Fact Finding Mission of 2019 provides evidence that family can be required to become informants, and if they refuse may be detained and beaten, and they may suffer threats and raids on their homes. This position clearly remains the same as at 12.8.1 of the CPIN on HDP supports that there is on-going suspicion on the part of the Turkish authorities to family of HDP members.
16. Ms Lagunju argued that internal relocation would not provide safety due to the Turkish Mukhtar registration system and that as a result the appellant's profile would become known to the authorities where ever he were to go to live and so the risk the appellant faces extends to the whole of Turkey.
17. At the end of the hearing I informed the parties that I reserved my decision.

Conclusions - Remaking

18. The found factual matrix of this case from the preserved findings from the First-tier Tribunal and the finding made at paragraph 12 above is as follows:
 - That the appellant is a Kurdish Alevi
 - That his family were supporters of HDP
 - That his parents were arrested, detained and released by the authorities as a result of being low level supporters of HDP
 - That his family sent him to the UK to live with his paternal aunt when he was 12 years old
 - The appellant did not leave Turkey as a draft evader
 - That the appellant has contact with some family in Turkey and his paternal aunt visited them in Summer 2023
 - The appellant has not engaged in pro-Kurdish activities in the UK
 - The appellant does not have a current Turkish passport

- That whilst living with his uncle, very shortly after his parents disappearance, the appellant and his uncle were visited by the Turkish police who interrogated them about this parents whereabouts and hit his uncle with a truncheon
19. Applying IA I find to the lower civil standard of proof that the following risk factors are present for this appellant: (f) having family who are likely to have been suspected of a PKK/ separatist connection through their HDP support; (i) Kurdish ethnicity; (j) Alevi faith; and (k) the lack of a current up-to-date Turkish passport. I do not find that the appellant has demonstrated that he himself was suspected of involvement with a separatist organisation so risk factor (a) is not made out. The evidence he gave was of the police questioning him about his parents whereabouts not about any activities he had participated in, and he has done nothing since his arrival in the UK to generate any suspicion of separatist sympathies, so I do not find that risk factor (n) is made out either.
20. I consider these risk factors in the context of the country of origin information in the 2019 Fact Finding Mission to Turkey and 2023 CPIN on HDP which the parties relied upon in their submissions. I find that it is very unlikely that the appellant will be targeted by the authorities because his parents were not high-profile HDP members and because he is not critical of the Turkish government, has not shown an interest in a Court case involving his parents, is not active politically on social media or by attending rallies (3.3.3 of the 2019 Fact Finding Mission to Turkey). Whilst there is also mention of the possibility of low profile member's relatives being forced to become informants, or beaten and detained if they refused, I do not think this is at all likely for this appellant as he has not been in Turkey since the age of 12 years and would not therefore be a useful informant as he would have no political or contextual understanding particularly given his parents who were the activists have disappeared and given there is no evidence that they are currently of any interest to the authorities. Further, the more recent country of origin information source, the 2023 CPIN on HDP at 12.8.1, indicates that HDP family members have suffered harassment rather than persecution as a result of their connection with an HDP member: denial of loans, building permits, loss of jobs, denial of a bank account except in one case which involved the wife of a HDP leader where she was falsely imprisoned. It goes without saying that the appellant's parents were never contended to be HDP leaders but rather low level supports/ activists.
21. I note from paragraph 78 of IK that the starting point is not with the airport but with any risk of persecution or serious harm in the home area, and that absent any material activities abroad (which there are not argued to be here) the claim cannot succeed without

a risk in the home area. I find that the appellant would, as he has accepted and notwithstanding his current state of anxiety and fear, be able to live with relatives in Nurdagi and note that he did not assert that they had all died or were homeless due to the earthquake. The appellant has supplied no updating evidence with respect to his parents and/or of any on-going interest, or the lack of it, in his parents by the authorities which, I find, he could reasonably have done via contact with relatives who remain in Nurdagi or by statements from UK based relatives who have travelled to the area recently. I am entitled to take notice of the lack of this reasonably available evidence as the appellant, who is represented by long-standing immigration solicitors, gave no plausible reason why a relative or relatives had not supplied a statement or statements or attended the Tribunal. I do not accept that the presence of children in the family suffices to explain the non-attendance at the Tribunal of the UK relatives. In this context I find that the appellant has not shown even to the lower civil standard of proof that there would be any on-going interest in him from the Turkish authorities as the 18 year old son of his parents who were detained very briefly some five years ago, particularly given that he has spent those five years in the UK so would not have witnessed anything in Turkey and given he has absolutely no political engagement at all. So whilst he, like many others in his region of Turkey, is from the less favoured Kurdish and Alevi communities, and has no current passport as he travelled to the UK irregularly, I conclude that considering the findings and country of origin evidence in the round that the appellant has not shown to the lower civil standard of proof that he would be at real risk of serious harm if returned to Turkey in his home area.

22. I also do not find that the appellant will be subject to transfer to the anti-terror police by the border control at Istanbul airport (and thus be at real risk of serious harm during an interrogation by these forces) in light of the guidance at paragraph 79 of IK and given my findings with respect to his profile above. It is possible that the appellant will be questioned by the border police given his irregular departure from Turkey and maybe that he will be transferred to the police station but I find that an honest account of what led the appellant to leave Turkey at the age of 12 years and his activities in the UK over the past five years will not give rise to any real risk that the appellant could be considered a separatist terrorist suspect.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. The Panel set aside the decision of the First-tier Tribunal dismissing the appeal.

3. I remake the appeal by dismissing it on asylum, humanitarian protection and human rights grounds.

Fiona Lindsley

Judge of the Upper Tribunal
Immigration and Asylum Chamber

7th August 2024

Annex A: Error of Law Decision

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Turkey born in July 2006. He arrived in the UK on 11th June 2019. He claimed asylum on 26th June 2019, and was refused in a decision of the respondent dated 28th April 2023, but was granted leave to remain until 2nd January 2024 due to being a minor. His appeal against the decision was dismissed by First-tier Tribunal Judge Alis after a hearing on the 11th January 2024.
2. Permission to appeal was granted by Upper Tribunal Judge Keith on 29th April 2024 on the basis that it was arguable that the First-tier judge had erred in law as he found that the appellant was Kurdish, and it was reasonably likely his family could have supported the HDP party, and had been detained (para [64iv]), while also concluding at para 66(f) that there was no evidence that his family had any connections with a separatist organisation, having previously concluded at paragraph 12(f) that the pro-separatist organisations named were forerunners to the HDP. It is also arguable that the Judge failed to analyse the Country Policy Information Note: Peoples' Democratic Party (HDP) October 2023 in the context of the appellant's parents' previous detention.
3. The matter came before us to determine whether the First-tier Tribunal had erred in law, and if so whether any such error was material and whether the decision needed to be remade.

Submissions - Error of Law

4. In the grounds of appeal and in oral submissions by Ms Nnamani for the appellant it is argued, in summary, as follows. The first ground contends as follows. The First-tier Tribunal judge made a number of findings at paragraph 64 of the decision which includes that the appellant is Kurdish; and that it was likely his parents had supported HDP and had been arrested, detained and released after being questioned. At paragraph 66 the First-tier Tribunal applied the country guidance in IA and Others (Risk-Guidelines-Separatist) Turkey CG [2003] UKIAT 34 and amongst the conclusions in that paragraph is the conclusion that neither the appellant nor his family have any connections with a separatist organisation. However HDP is a pro-Kurdish party which is considered as separatist, as were its predecessors HADEP and KADEK, as is set out at paragraphs 53-55 and 57 of the decision. It is argued that this undermines the findings of the First-tier Tribunal that the appellant would be safe on return because the appellant would be at risk due to his connection with his parents who would be seen

as supporters of Kurdish separatism. The conclusion that it was unlikely that the appellant would have been questioned to locate his parents is also argued to be inadequately reasoned as he could reasonably have been questioned on the last occasion as unlike on previous occasions his parents had disappeared and he was the eldest child. The fact that the appellant's aunt had gone to Turkey was only found at paragraph 64(vii) of the decision to be evidence that the appellant did have some remaining relatives in Turkey following the earthquake.

5. The second ground contends that there was a failure to consider the country of origin materials, and in particular the CPIN on HDP dated October 2023 at 12.4.1 which indicates that low level HDP members are targeted, arrested and detained in Turkey.
6. In a Rule 24 response, and a skeleton argument and oral submissions from Mr Melvin it is argued for the respondent that there is no evidence that children of HDP supporters are mistreated and the risk factors identified in IK (draft evaders, records IFA) Turkey CG [2004] UKIAT 312 do not support the appellant being at risk. Simply because the appellant was potentially of interest due to the possibility of his having information about his parents would not necessarily continue to make the appellant a person of adverse interest to the Turkish authorities. This is supported by the fact that the appellant's aunt and carer had gone to Turkey and did not give evidence before the First-tier Tribunal. The grounds are asserted to simply be a disagreement with the conclusions of the First-tier Tribunal which, when read as a whole, is properly reasoned and refers to all relevant country of origin evidence in the CPIN and the relevant country guidance cases.
7. At the end of the hearing we informed the parties that we found that there was a material error of law in the decision. We set out our reasoning below in writing. We informed the parties that we would preserve the following findings:
 - That the appellant is a Kurdish Alevi
 - That his family were supporters of HDP
 - That his parents were arrested, detained and released by the authorities as a result of being low level supporters of HDP
 - That his family sent him to the UK to live with his paternal aunt when he was 12 years old
 - The appellant did not leave Turkey as a draft evader
 - That the appellant has contact with some family in Turkey and his paternal aunt visited them in Summer 2023
 - The appellant has not engaged in pro-Kurdish activities in the UK
 - The appellant does not have a current Turkish passport

8. We adjourned the remaking hearing, which will deal with both protection and human rights aspects of this appeal, to be listed at the first available date before the Upper Tribunal with a Turkish interpreter.

Conclusions – Error of Law

9. We find that the First-tier Tribunal erred in law in not applying material evidence from the CPIN as set out at paragraphs 53 to 56 of the decision that HDP is viewed by the Turkish authorities as a Kurdish separatist organisation as its members are viewed as supporting the PKK. We finds that this leads to a material error of law at paragraph 66 of the decision where it is found that there was no evidence the appellant's family had connections with a separatist organisation despite it having been found at paragraph 64 of the decision that they were low level supporters of HDP and were arrested, detained, questioned and then released as a result of their political involvements.
10. We also find that the conclusion that the appellant was not himself questioned at paragraph 64 v is not sufficiently reasoned and may in any case have been infected by the failure to apply the country of origin information that HDP is linked to Kurdish separatism, and so, we find, this findings was also not safely made.
11. We find that failure to acknowledge the risk factor for the appellant of having family who are likely to have been suspected of a PKK/ separatist connection through their HDP support may have been material in the appeal being dismissed. We cannot say that had this factor been acknowledged the outcome of the appeal would definitely have been the same. We therefore set aside the decision of the First-tier Tribunal dismissing the appeal. The decision will have to be remade factoring this into consideration; and also with a new finding, to be made in light of the political connotations of the HDP and other evidence, relating to whether the appellant has shown to the lower civil standard of proof that he was questioned himself.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. We set aside the decision of the First-tier Tribunal dismissing the appeal but preserve the findings set out at paragraph 7 of this decision.
3. We adjourn the remaking of the decision.

Directions:

1. Any updating evidence on which either party wishes to rely must be electronically filed with the Upper Tribunal and served on the other party 10 days prior to the remaking hearing.

Fiona Lindsley

Judge of the Upper Tribunal
Immigration and Asylum Chamber

11th June 2024