



IAC-FH-AR-V1

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

Appeal Number: AA/03375/2015

THE IMMIGRATION ACTS

Heard at Field House

On 8th March 2016

**Decision & Reasons
Promulgated**

On 31st March 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

Appellant

MK

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr P Nath, Home Office Presenting Officer

For the Respondent: Miss G Peterson, Counsel, instructed by Stuart & Co
Solicitors

DECISION AND REASONS

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure
(Upper Tribunal) Rules 2008**

The First-tier Tribunal made an order pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order.

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.

1. Although the Secretary of State is the Appellant I refer to the parties as they were in the First-tier Tribunal.
2. The Appellant, a citizen of Turkey, appealed to the First-tier Tribunal against the decision of the Secretary of State dated 16th February 2015 to refuse his application for asylum in the UK. First-tier Tribunal Judge Dineen allowed the appeal on asylum and human rights grounds. The Secretary of State now appeals with permission to this Tribunal.
3. The First-tier Tribunal Judge found that there were serious inconsistencies in the Appellant's account of having been involved with the PKK or any other opposition party in Turkey, his claim to have been detained by the authorities there, and the duration of any alleged detention there and the judge rejected this part of the Appellant's account. However the judge found that the fact that two of the Appellant's brothers have been granted refugee status in the UK is a matter which "would be likely to be revealed by enquiries in the Appellant's home area and which in any event would have to be revealed by the Appellant answering truthfully if about his family" [76].
4. The judge further found that it is likely that the Appellant would be asked why he claimed asylum in the UK and, if answering such questions truthfully, he would have to admit that initially his case for asylum was based on his claimed or suspected involvement with the PKK [77].
5. The judge concluded that, notwithstanding his findings in relation to the Appellant's lack of credibility;

"he would be likely to be passed on for further investigation to the police and then to the Anti-Terror branch. In the hands of either of those organisations he would, bearing in mind the country information referred to above, be at real risk of persecutory treatment." [78]
6. He found it unlikely that the Turkish authorities would be inclined to accept that the Appellant was lying to the UK authorities about his activities and history. The judge found that as the Appellant would be at risk of persecution it would not be reasonable to expect his child to leave the UK to go to Turkey and allowed the appeal under Article 8 also.
7. In the Grounds of Appeal to the Upper Tribunal the Secretary of State contends that the First-tier Tribunal Judge failed to apply the relevant case law of **CY (Turkey) v SSHD [2009] EWCA Civ 393; IM (Turkey) v SSHD [2207] EWCA Civ 505; and CE (Turkey) [2004] UKIAT 00233.**

It is further contended that the judge noted that the Appellant's mother came to the UK and returned to Turkey without difficulty and it is contended that this demonstrates that there is no risk to the Appellant. The Secretary of State further contends that the enforced return of a failed asylum seeker is not a category identified in any case law which would place the Appellant at risk in Turkey.

8. Permission to appeal was granted on the basis that it is arguable that the judge failed to give adequate reasons for concluding that the Appellant was at risk on return despite not being a truthful witness. In the Rule 24 statement it is contended that the judge was right in allowing the appeal in that the Appellant claimed that he was at risk of returning to Turkey on the basis of his association with his family members who are "known separatists".
9. At the hearing before me Miss Peterson submitted that the hearing in the First-tier Tribunal opened with a concession from the Secretary of State that the Appellant's brothers had made claims for asylum based on the same sorts of activities as those claimed by the Appellant. She said that the Presenting Officer said that one of the brothers was granted asylum and the other brother's application was refused, but that decision was withdrawn before his appeal and he was granted exceptional leave to remain in the UK. She submitted that it was accepted they had given credible accounts and she submitted that submissions were made in the First-tier Tribunal that the Appellant's family was a political family.
10. Miss Peterson submitted that she was not entirely happy with the findings made by the judge and submitted that the judge should have taken the status of and decisions made in relation to the Appellant's brothers as his starting point for the credibility findings but submitted that in the end that is where the judge's findings did go. She submitted that the conclusion was open to the judge based on all factors set out in **IK (Returnees - records - IFA) Turkey CG [2004] UKIAT 00312** and that the judge's findings at paragraph 76 are based on these submissions. She submitted that is not simply arrest warrants on the GBTS but other factors which spark further investigations by the Turkish authorities upon return.
11. Miss Peterson submitted that the evidence before the judge included the Home Office concession and the Appellant's responses in his asylum interview in relation to his brothers and their activities. She submitted that the judge essentially concluded at paragraphs 76 and 78 that the standing of the family will come to light and that would lead to further investigations of the Appellant. She submitted that those findings can stand on the basis of the country guidance and the situation in Turkey as it was at the date of the hearing. She submitted that the situation has arguably worsened since then.
12. Miss Peterson strongly disputed that there was any evidence for the judge's assertion at paragraph 50 of his decision that "in any event, the Appellant's wife states clearly that she and their child would accompany

him if he were to have to return to Turkey". She submitted that there was no evidence for this in the Appellant's wife's witness statement or in her record of her oral evidence. She submitted that there is no evidence that the Appellant's wife and child would return with him to Turkey.

13. Relying on **IK** Miss Peterson submitted that a number of cumulative factors would cause further investigation in relation to the Appellant. These include his family connections, his Kurdish ethnicity and his lack of passport upon arrival in Turkey.
14. Mr Nath submitted that the judge has not set out enough information as to his reasoning. He submitted that the judge states that the Appellant's brothers were granted refugee status but does not go into the reasons why they were so granted and does not go into the Appellant's Asylum Interview Record. He accepted that he had a note that the Presenting Officer mentioned the Appellant's brothers at the outset of the hearing. He submitted that, although the Appellant's case is in relation to the risks caused by his family's activities, paragraphs 76 and 78 do not explicitly state this. He submitted that the judge fell short of dealing properly with the issue of internal relocation.

Error of Law

15. I accept that on an initial reading of paragraph 76 of the judge's decision it may appear that the judge considered that the simple fact that his brothers had been granted refugee status in the UK would be a matter which would lead to an increased risk for the Appellant upon return to Turkey. However, I take into account Miss Peterson's submissions and I accept that the Appellant had detailed his brothers' activities in the asylum interview, in particular from paragraphs 117 onwards. I accept that this evidence was before the judge as well as the indication from the Presenting Officer at the outset that the Appellant's brothers' accounts had been accepted. It is therefore in this context and on the basis of this evidence that the judge reached the conclusion at paragraph 76. I accept that reading the decision as a whole and in light of the evidence before the judge that this conclusion at paragraph 76 was more than just a reference to the fact that the Appellant's brothers have been granted refugee status. I accept that the judge must have had in mind the evidence before him as to the Appellant's family background and profile which he accepted would be likely to be revealed by enquiries in the Appellant's home area.
16. At paragraph 77 the judge talked about the fact that the Appellant is a failed asylum seeker and I accept that this in itself would not be a ground for allowing the appeal. However, I consider that this must be read in the context of paragraphs 76 and 78 and I accept Miss Peterson's submission that the judge took into account the cumulative effect of these factors in reaching his conclusion that the Appellant would be subject to investigation upon return to Turkey and the risk associated with that. This conclusion was open to the judge in light of the guidance in **IK**.

17. The judge also allowed the appeal on human rights grounds following on from his findings that the Appellant would be at risk on return. This falls short of a full examination of the Appellant's right to family life and in this context I note that there is nothing before me to indicate that there was evidence before the judge that the Appellant's wife said that she and her child would accompany the Appellant if he had to return to Turkey. In any event, in light of the fact that the judge allowed the appeal under Article 8 because of the risk to the Appellant on return [51], I am satisfied that there is no material error in his consideration of this part of the appeal.

Notice of Decision

18. The judge made no material error in the decision and the decision of the First-tier Tribunal shall stand.

Signed

Date: 14th March 2016

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed

Date: 14th March 2016

Deputy Upper Tribunal Judge Grimes