



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

Appeal Number: PA/06515/2016

**THE IMMIGRATION ACTS**

**Heard at Field House London  
On 22 August 2017**

**Decision Promulgated  
On 6 September 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE McCARTHY**

**Between**

**MD  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr R Halim, instructed by Haq Hamilton Solicitors  
For the Respondent: Mr P Singh, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals with permission against the decision and reasons statement of FtT Judge Aujla that was issued on 30 May 2017. Judge Aujla decided the appellant is not a refugee from Turkey or otherwise in need of international protection.
2. Judge Aujla made an anonymity direction. Given the nature of this appeal, it is appropriate to continue anonymity and I make the appropriate order at the end of this decision.

3. Although the appellant originally relied on eight grounds, Mr Halim abandoned the last two and regrouped the others into a more logical framework. At the hearing, he relied on the following three key aspects. First, Judge Aujla failed to have proper regard to whether the appellant would appear on the Turkish computerised records (GBT system) as a draft evader / conscientious objector. Mr Halim reminded me that Judge Aujla accepted the appellant was a draft evader / conscientious objector at [48] because of the findings made earlier by Judge Shaerf, which became his starting point (*Devaseelan* applied). As a result, given the conclusions in *IK (Returnees - Records - IFA) Turkey* [2004] UKIAT 312, which Judge Aujla cited at [39], Mr Halim argued Judge Aujla erred by failing to recognise that draft evasion was a reasonable basis for inferring the appellant would be on the GBT system. The fact current Home Office country information continues to support this view, because of the situation surrounding military service in Turkey, means this oversight was material.
4. Second, Judge Aujla failed to give weight to the clinical conclusions contained within the Consultant Psychiatrist's report as to the effect separation from family would have on the appellant on return to Turkey. This was a factor that went to the question of proportionality under article 8 ECHR in terms of factors affecting moral and physical integrity. By implication it also went to paragraph 276ADE as to whether the appellant's mental health condition was a very significant obstacle to integration. This failure means the balancing exercise is incomplete.
5. The assessment carried out by Judge Aujla was also flawed because he found the appellant's ethnicity as a Kurd would help his integration into Turkey. This position is contrary to all country guidance and background country information, Kurds facing discrimination in Turkey because of their ethnicity. This factor was improperly relied upon by Judge Aujla and further undermines the proportionality assessment.
6. Third, Judge Aujla stated he could give no weight to the witness evidence because there was no explanation why the witness had not been called to give evidence. This overlooked paragraph 4 of the witness's written statement, in which he explained he was living in France and could not afford to visit the UK.
7. In addition, Mr Halim reminded me that one of the reasons Judge Aujla found the appellant not credible was the delay in making further submissions. This failed to take into consideration the fact the appellant applied in 2013 and his application fell within the "legacy" policy. The delays were not of the appellant's making.
8. Although Mr Singh did not agree with all the grounds, he conceded that Judge Aujla took the wrong approach to the psychiatric evidence and thereby fell into legal error. The appellant's mental health was a relevant factor to be considered when assessing proportionality under article 8 ECHR. Mr Singh further conceded that Judge Aujla's findings that the appellant's Kurdish ethnicity would help his integration was confused and was a further problem with the decision. Mr Singh also conceded that Judge Aujla failed to have regard to the explanation for the absence of the

appellant's witness and therefore the reason given for rejecting that evidence was wrong in law.

9. Mr Singh was realistic in identifying that the errors he accepted meant nothing of Judge Aujla's findings could be preserved. He agreed with Mr Halim that the appeal needed to be reheard by a different judge in the First-tier Tribunal.
10. Given such agreement, there is little for me to say. I agree that there are obvious legal errors, as conceded by Mr Singh, and they are sufficient reason for setting Judge Aujla's decision aside and remitting the appeal.
11. For completeness, I have considered the other grounds, which centre on whether the appellant was recorded as a draft evader. Judge Shaerf made a clear finding that it is reasonably likely the appellant was recorded as a draft evader, and this finding must be the starting point in any future assessment (as per *Devaseelan*). It was necessary, therefore, for Judge Aujla to consider why the appellant would not come to the adverse attention of the Turkish authorities because draft evasion was a factor that was likely to be recorded on the GBT system. The failure to examine this issue is a legal error.
12. It follows that the appeal must be reheard in full in the First-tier Tribunal by a judge other than Judge Aujla.

### **Decision**

The appeal is allowed.

The decision of Judge Aujla is set aside because it contains legal errors.

The appeal is remitted to the First-tier Tribunal to be heard by a different judge.

### **Order regarding anonymity**

I make the following order. I prohibit the parties or any other person from disclosing or publishing any matter likely to lead members of the public to identify the appellant. The appellant can be referred to as "MD".

Signed

Date

6 September 2017

Judge McCarthy  
Deputy Judge of the Upper Tribunal