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

Appeal Number: AA/11514/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 8 September 2015**

**Decision and Reasons
Promulgated
On 10 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE A M BLACK

Between

**O A
(ANONYMITY DIRECTION MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Bonavero, Counsel, instructed by Trott & Gentry LLP
Solicitors

For the respondent: Mr Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Turkey who appealed against the decision of the respondent on 27 November 2014 to refuse his asylum claim. Following a hearing on 26 March 2015, his appeal was allowed by Judge of the First-tier Tribunal Freestone ("the FTTJ") in a decision promulgated on 7 April 2015.

2. I refer to the parties as they were in the First-tier Tribunal though the Secretary of State is appealing in these proceedings.
3. An anonymity direction was not made in the First-tier Tribunal but, given the references to the appellant's personal circumstances, he is entitled to anonymity in these proceedings and I make a direction accordingly.
4. The respondent sought permission to appeal on the grounds that, whilst the FTTJ had noted the appellant's risk profile, she had not taken into account the appellant's father, the source of the Turkish authorities' hostility to the appellant, was sponsoring the appellant's mother for a visit visa application made in October 2014. The FTTJ had not borne in mind the country guidance in **IK (Returnees - Records - IFA) Turkey CG [2004] UIKAIT 00312**. Further, the FTTJ had considered the risk on return at the airport first.
5. Permission to appeal was granted by Judge of the First-tier Tribunal Macdonald on 24 April 2015 because it was arguable that the reasoning as to why the appellant would face persecution at the airport was slender and not made out by the findings in paragraph 22. Furthermore, the starting point for risk on return should normally be, not the airport, but the risk in the appellant's home area.

The Submissions

6. Mr Avery submitted that the FTTJ's credibility findings were flawed: the FTTJ should have taken the background situation and **IK** into account; nor had she referred to the appellant's mother's visit in her findings. He accepted that it was not clear from the presenting officer's notes made on the hearing that the appellant had been cross-examined on the latter issue. The FTTJ had failed to follow the country guidance and had given no reason for that. He referred to paragraph 133 which contained a summary of generic conclusions. It was accepted by the respondent that the appellant's brother had been questioned on return but the appellant's brother had been questioned as a result of having a British passport and this was not relevant to the appellant. He submitted that the issue was whether the appellant would be identified at the airport on return; if so, would it lead to questioning which could amount to persecution? The FTTJ should have addressed this. It was accepted by the respondent that, if she had appropriately concluded he was at risk at the airport, there was no need to go on to consider internal relocation. That said, according to **IK**, there was more likely to be a problem in a claimant's home area, where local records existed and there was known PKK activity, than in an area without records and where the PKK were not active. These were matters the FTTJ had failed to address.
7. Mr Bonavero, for the appellant, submitted that the challenge to credibility was a challenge to the FTTJ's fact finding. There needed to be perversity in the decision for the challenge to succeed, i.e. that no reasonable Judge

would make it or it was so unreasoned that it could not be understood. The FTTJ's findings were clear and neither challenge could be made out.

8. He submitted that the respondent's challenge was on the basis that the FTTJ had failed to mention the presenting officer's submissions in her fact finding. This had no legal foundation. The FTTJ had understood she had no obligation to note every point meticulously.
9. With regard to **IK**, Mr Bonavero said there had been no submission on the issue of materiality. The appellant had been tortured over a period of three days, released as an informer and escaped. It was obvious he would be at risk according to **IK** in his home area. Whether or not the FTTJ had started with that assessment, it made no difference; the thrust of her determination was that he would be at risk, according to **IK**, in his home area. With regard to relocation, the respondent had been right to say that this was irrelevant if the appellant were found to be at risk at the airport. The FTTJ had stated at paragraph 22 that he was so at risk; therefore there had been no need for her to address internal relocation.

Discussion

10. The FTTJ based her findings on credibility on several factors as set out at paragraphs 18-21. She noted his answers in a lengthy asylum interview (without legal support) were full and consistent; she also noted there had been "little challenge" to that evidence. The FTTJ referred to two matters which the respondent had identified as inconsistencies and, in the case of the first, decided that it not undermine his credibility and, in the case of the second, that there was no inconsistency at all. She found there was a reasonable explanation for the lack of documentary evidence to support the appellant's claim. Her observation that the appellant's "lack of a political profile would not have prevented the authorities from detaining him" is a reasonable one, given that he was arrested because he was at home with his father who was the target of the authorities and with whom he had attended the demonstration; the appellant's political profile, and/or the lack of it, was immaterial to the reasons for his arrest.
11. There is no reference in the judge's findings to her rejecting the respondent's position that it was reasonable to infer that the appellant's father would have provided evidence of his property, occupation and salary in support of his wife's application for a visit visa in October 2014. However, from the fact that this is noted in paragraph 15 as being the respondent's case, it is implicit that the FTTJ took this into account. Even if she had not, little weight could have been given to this matter, given the consistency and limited challenge to the appellant's evidence on the salient issues, namely his detention, confession, mistreatment and escape. In any event, the ability of the appellant's father to sponsor his wife is consistent with the evidence given by the appellant in his screening interview that his father had a livestock business. The failure of the FTTJ to refer to this issue does not have a material bearing on the outcome of the factual analysis.

12. Whilst Mr Avery submitted that the FTTJ had failed to take background material into account in assessing the appellant's credibility, I do not consider this was unreasonable. The FTTJ was entitled to conclude that the appellant's evidence was sufficient of itself, without reference to background material, for a finding of credibility given its detail, consistency and the limited challenge to it. In effect, she adopts the claim of the appellant which she summarised at paragraph 11-14. This is that he had been attending political demonstrations with his father since the age of 13 and that on 2 April 2012 he and his father were arrested by the police and handed over to the Gaziantep anti-terror branch; the appellant was severely ill-treated and released after three days. He was asked to become an informer and was told to report to a police station. He did not do either. His father was released a few days later and arrangements were made for the appellant to leave Turkey which he did in May 2012. Thus it can be inferred that the FTTJ has accepted that the appellant would be at risk on return to his home area, having fled without acting as an informer (the basis of his release) or complying with reporting restrictions. There was no need for the FTTJ to address further the issue of risk on return to the appellant's home area, having found the appellant's evidence to be credible, before turning to the issue of risk at the airport.
13. It was accepted by the respondent that the appellant's brother had been questioned at the airport on return. However, according to Mr Avery, this questioning was an irrelevance because it had been based on the appellant's brother's possession of a British passport. Whilst that may have been the case, there was no evidence as to whether the questioning was caused by the mere existence of a British passport or whether there was some other (unspecified) reason for it. The FTTJ makes no finding on the cause of the questioning but merely takes it into account. It was reasonable for her to do so, given that it was uncontested. She does not give undue weight to it.
14. Mr Avery submitted that the FTTJ had given insufficient reasons for the conclusion at paragraph 22 that "there will be sufficient interest shown in him to detain him for questioning in much the same way his brother was when he returned to Turkey in 2013. I am also satisfied that when enquires are made in his home areas his detention will come to light particularly as he was released with a condition of reporting but failed to do so". He criticises the FTTJ's failure to refer to **IK** (albeit she has cited the presenting officer's submissions in relation to **IK**).
15. The FTTJ concluded that the appellant would be returning to Turkey as a failed asylum seeker. It is implicit that he would be returning on an emergency travel document (having entered the UK illegally in a lorry). Paragraph 133, sub-paragraph 6 of **IK** states: "If there is a material entry in the GBTS or in the border control information, or if a returnee is travelling on a one-way emergency travel document, then there is a reasonable likelihood that he will be identifiable as a failed asylum seeker and could be sent to the airport police station for further investigation." This situation would apply to the appellant.

16. Sub-paragraph 1 of the same paragraph notes that the computerised GBTS system, which is available to the border police in booths at Istanbul airport and elsewhere in Turkey to the security forces, comprises previous arrests. Whilst “arrests” in the GBTS system were to be distinguished from “detentions” by the security forces followed by release without charge, in the present case the appellant was told to report and failed to do so. It is not unreasonable to conclude therefore that his reporting restrictions would be on record.
17. Furthermore, sub-paragraph 5 states that “If a person is held for questioning either in the airport police station after arrival or subsequently elsewhere in Turkey and the situation justifies it, then some additional inquiry could be made of the authorities in his local area about him, where more extensive records may be kept either manually or on computer. Also, if the circumstances so justify, an enquiry could be made of the anti terror police or MIT to see if an individual is of material interest to them.”
18. It was not unreasonable for the FTTJ to take into account that the appellant’s brother had been questioned on arrival in Turkey, in her consideration of the appellant’s status as a failed asylum seeker and to find that he would be questioned on return, particularly in the light of the presenting officer’s concession on this point. However, the FTTJ failed to take into account the terms of sub-paragraph 7 of paragraph 133 of **IK** which require the “Adjudicator in each case to assess what questions are likely to be asked during such investigation and how a returnee would respond without being required to lie. The ambit of the likely questioning depends upon the circumstances of each case.” The terms of paragraph 125 of **IK** are helpful in this respect: “it will be apparent from his emergency travel documents and from the fact he left Turkey illegally, that he is likely to be a failed asylum seeker. There is therefore likely to be some further questioning about his history. The issues arising are what will emerge from this and what risk will attach to him as a consequence. ...”
19. Whilst it was an error of law for the FTTJ not to identify the questions likely to be asked of the appellant at the airport, if she had followed the guidance at paragraph 125 and taken into account the appellant had left Turkey illegally and was returning as a failed asylum-seeker, she would have found such questioning would relate to his reasons for leaving Turkey. The appellant could not be expected to lie about this; he would give an account of being arrested, detained, mistreated, released as an informant and his reporting restrictions. The consequences of such information being given to the authorities are obvious: further investigations in his home area would be conducted and this would lead to his identification as a person who had confessed to being PKK, had been seen at demonstrations, had been arrested and detained, failed to comply with both a request to inform and with reporting restrictions. He would be at risk as a result of those enquiries.
20. For these reasons, although the FTTJ failed to address all the issues identified at paragraph 133 of **IK**, that failure, albeit an error of law, has

had no material impact on the decision-making process or the outcome. In other respects, the FTTJ's reasoning, though spare, is adequate and does not contain an error of law

21. There is no material error of law in the FTTJ's findings and decision.

Decision

22. The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.

23. I do not set aside the decision.

Signed **A M Black**

Deputy Upper Tribunal Judge A M Black Date

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

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 their 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.

Signed **A M Black**

Deputy Upper Tribunal Judge A M Black Date