



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

Appeal Number: PA/04003/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 9 January 2018**

**Decision Promulgated
On 18 January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE FROMM

Between

[K A]

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Nnamani, Counsel

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS ON ERROR OF LAW

1. The appellant is a citizen of Turkey. He has appealed with the permission of the First-tier Tribunal against a decision of Judge of the First-tier Tribunal Lucas, dismissing his appeal against a decision of the respondent to refuse his protection and human rights claims. The appellant claimed to be of Kurdish ethnicity and to have been an active support of the HDP (People's Democratic Party) in his home town of Gaziantep. He said he came to the UK because he feared persecution on account of his political opinion.

2. The First-tier Tribunal declined to make an anonymity direction. I was not asked to make a direction and saw no reason to make one at this stage.
3. The appeal was heard at Taylor House on 24 May 2017. The appellant was represented by counsel and gave oral evidence. He supported his appeal with medical evidence showing he was suffering from depression and PTSD.
4. Judge Lucas set out a number of reasons for rejecting the entirety of the claim, including the claim that the appellant is Kurdish. At paragraph 42 of his decision, he stated as follows:

“It is accepted that it is stated that the Appellant suffers from PTSD and that his injuries are consistent with his account of having been beaten in custody. However, it is not accepted that the appellant was in fact detained and ill-treated at all. This being the case, it is obvious that his psychiatric issues and scarring must have an alternative causation. It is not for the Tribunal to second guess these issues, but they do not add weight to this appellant’s claim.”
5. Permission to appeal was granted by Judge of the First-tier Tribunal Robertson. She found it was arguable that Judge Lucas had erred in rejecting the medical evidence on the basis of his credibility findings rather than considering the evidence as a whole before making his credibility findings.
6. The respondent filed a rule 24 response opposing the appeal. This argues the Judge considered all the evidence and gave adequate reasons for rejecting the core of the claim.
7. However, at the hearing, there was general agreement that the Judge’s decision was flawed in that he had failed to follow the approach set out by the Court of Appeal in *Mibanga v SSHD* [\[2005\] EWCA Civ 367](#).
8. I set aside the decision of Judge Lucas for the following reasons.
9. Permission to appeal was granted to argue both the grounds set out in the application for permission to appeal but it is only necessary to consider one of them.
10. In paragraph 24 of the judgment in *Mibanga*, Wilson J stated as follows:

“It seems to me to be axiomatic that a fact-finder must not reach his or her conclusion before surveying all the evidence relevant thereto. Just as, if I may take a banal if alliterative example, one cannot make a cake with only one ingredient, so also frequently one cannot make a case, in the sense of establishing its truth, otherwise than by combination of a number of pieces of evidence”.
11. It is clear the Judge in this case fell precisely into this error in that he reached a conclusion on the appellant’s credibility before looking at the medical evidence. The correct approach was to look at the evidence in the round, including the medical evidence, before reaching a conclusion on

credibility. The error is material because it cannot be ruled out that, had he applied the correct approach, the Judge might have come to a different conclusion.

12. The parties were not prepared for the appeal to be re-heard at the same hearing. As a fresh hearing is necessary, I agree with the representatives that the appeal must be remitted to the First-tier Tribunal in line with paragraph 7.2 of the Practice Direction.
13. The appeal must be heard de novo by a different Judge of the First-tier Tribunal. To assist with that task I make the following directions:

DIRECTIONS

- (1) The appeal will be heard by any Judge of the First-tier Tribunal except Judge Lucas on a date and at a place to be notified;
- (2) None of the findings made by Judge Lucas are preserved;
- (3) A Turkish interpreter will be provided;
- (4) If either party wishes to file additional evidence not previously filed, a consolidated bundle should be prepared containing the fresh evidence and all the evidence previously filed, which bundle must be filed at the Tribunal and served on the other party no later than 14 days before the hearing.

NOTICE OF DECISION

The Judge of the First-tier Tribunal made a material error of law and his decision dismissing the appeal is set aside. The appeal will be heard again in the First-tier Tribunal.

No anonymity direction has been made.

Signed

Date 9 January 2018

Deputy Judge of the Upper Tribunal Froom