



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number PA/09023/2018

THE IMMIGRATION ACTS

Heard at Field House
On 29th January 2019

Decision and Reasons Promulgated
On 20th February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

A G
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Ms M Gherman (Counsel, instructed by Virgo Solicitors)
For the Respondent: Mr D Clarke (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant's asylum claim was rejected by the Secretary of State and his appeal dismissed by First-tier Tribunal Judge Seelhoff in a decision promulgated on the 7th of September 2018. The Judge's findings and conclusions are set out at paragraphs 26 to 38 of the decision. These are referred to in more detail below but in summary the Judge accepted the Appellant's factual account of events in Turkey including his detentions but found that these did not amount to persecution but only to harassment and that he could return to his home area.
2. The Appellant was granted permission to appeal to the Upper Tribunal on the basis that the Judge arguably failed properly to characterise the Appellant's past ill-treatment as not being sufficiently serious to amount to persecution or contrary to article 3. Although that did not mean that the Appellant would be at risk on return past ill-treatment was relevant to the assessment of future risk and the Judge may not have considered IK properly.
3. At the Upper Tribunal hearing Mr Clarke conceded that decision did contain a material error of law as the factual findings of ill-treatment were such that they should properly have been accepted as amounting to persecution. The parties' submissions are set out in the Record of Proceedings. Given that the Judge's credibility findings remain undisturbed it was accepted that

the decision could be remade in the Upper Tribunal. Both representatives made submissions in line with their respective positions and at the end of the hearing the decision was reserved.

4. The Judge's findings where there is no challenge are at paragraphs 26 to 29. The Judge accepted that the Appellant was an uneducated shepherd and accepted that the Appellant was from the area of Turkey that he had said. The Judge also accepted that the Appellant regularly had his lunch stolen by the PKK and that he had been arrested on occasions by the Turkish authorities because, as a shepherd, it was thought that he might be taking supplies to PKK members hiding in the hills and that he had been beaten up but there were no specific injuries attributed to this treatment.
5. The risk to the Appellant has to be assessed in light of the guidance in the case of IK (Returnees – Records – IFA) Turkey CG [2004] UKAIT 312, the generic conclusions are set out at paragraph 133 of the decision. The GBTS system “comprises only outstanding arrest warrants and previous arrests, restrictions on travel abroad, possible draft evasion, refusal to perform military service and tax arrears. “Arrests” as comprised in the GBTS require some court intervention and must be distinguished from “detentions” by the security forces followed by release without charge.” The system is available to the border Police at Istanbul airport.
6. Paragraph 133, points 5 to 7, deal with what would happen on an Appellant's return to Turkey. From point 6 the Appellant would be returning on a one-way ETD and so be identified as a failed asylum seeker and so could be sent for further investigation. From point 5 if the Appellant were detained in the situation justified it then additional enquiry could be made of the authorities in his home area where more extensive records could be kept. The adjudicator would have to assess the questions that would be asked and how the Appellant would reply without lying.
7. There is nothing in the Appellant's interview or witness statements that suggests that he was ever charged or brought before a court or other form of legal proceedings. The account does not contain the suggestion that the Appellant's details were taken or that he was targeted rather he was picked up on an occasional basis at the whim of the security forces. His last detention according to his interview 2012 or thereabouts and his reason for coming to the UK was the land feud he described with local Arabs and not the treatment he received from the Police or PKK. The Appellant did not suggest that his family had suffered from adverse Police or security forces attention.
8. Whilst it is accepted that the treatment of the Appellant by the authorities in his home area amounted to persecution it does not appear from the Appellant's account that he was targeted by name or on the basis of evidence or intelligence but by virtue of his occupation as a shepherd and the assumption that he would be providing assistance to the PKK. As his details were not taken and there is no evidence of judicial or other official involvement in his detentions the Appellant's details would not appear on the GBTS system or local records of any sort.
9. In those circumstances the Judge's findings at paragraph 37 were justified, the Appellant has no profile that would bring him to the attention of the authorities and he would not be considered to be involved in opposition politics. Applying the guidance in IK to the Appellant's circumstances and the evidence that was accepted I find that the Appellant would not be identified as being of any interest on return to Turkey and that he could either return to his home area or he could internally relocate within Turkey. Although the Judge erred in the characterisation of the Appellant's treatment in Turkey I find that applying the approach from IK to the findings that had been made lead to the conclusion that the Appellant is not in need of international protection.

CONCLUSIONS

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision and remake the decision dismissing the appeal.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.)

Fee Award

In dismissing this appeal I make no fee award.

Signed: 

Deputy Judge of the Upper Tribunal (IAC)

Dated: 18th February 2019