IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006505
First-tier Tribunal Nos:
PA/52598/2021
IA/07183/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 06 July 2023

Before

UPPER TRIBUNAL JUDGE KEITH

Between

'A P' (Turkey)
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Ms N Nnamani, Counsel instructed by Howe & Co Solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

Heard at Field House on 1 June 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. These written reasons reflect the oral reasons given to the parties at the end of the hearing. The focus of this appeal is the appellant's claim, as a Turkish national, to have a well-founded fear of persecution as a supporter of the Gülenist Movement in Turkey. He claims that his background as a teacher in Turkey, in a school previously associated with that movement, which is perceived by the Turkish government as a terrorist organisation, forms the basis of his well-founded fear. He claimed to have suffered adverse interest in Turkey, including having his work permit cancelled, his house being the subject of a police raid,

having been detained for a number of months, with adverse treatment whilst detained; and post-release requirements to report regularly.

The Judge's decision under challenge

2. Judge of the First-tier Tribunal Judge Cohen rejected the appellant's claim in a decision promulgated on 24th July 2022. The Judge did not accept that the appellant would be of adverse interest to the Turkish authorities, noting what he regarded as inconsistent answers in the appellant's asylum interview relating to the dates of arrest, detention and release; the detail of dates of reporting requirements; his lack of detailed knowledge about the Gülenist Movement and whilst the respondent had specifically accepted that the appellant had worked at a Gülenist school in Turkey, at §50 of his decision, the Judge concluded that simply because he was a PE teacher this would not have brought him to the attention of the Turkish authorities when the school was closed. The Judge went on to assess as not reliable various documents on which the appellant claimed to rely, which included evidence said to relate to the appellant's criminal prosecution on terrorism offences.

3. In relation to the appellant's health, the Judge considered correspondence from the appellant's GP which diagnosed PTSD. The Judge did not accept the claimed cause, i.e. ill-treatment. The Judge also considered the appellant's claimed low level 'sur place' activity in the UK, which he did not regard as risking adverse interest in Turkey. The Judge concluded by rejecting the appellant's claims.

The appellant's challenge

4. In terms of the appellant's grounds of appeal and grant of submission, which I do no more than summarise, these argue that the respondent had, in her refusal decision, accepted that the appellant had been employed in a Gülenist Movement affiliated school and in his role as a teacher, he could, as a consequence be perceived as a supporter, which was reflected in the Judge's decision at §30. The respondent appeared to accept that the appellant may have perceived as a Gülenist purely from his employment. This was sufficient for him to face imprisonment as a terrorist.

5. At this stage, I accept Mr Avery's submission that the second sentence at the beginning of §30 of the Judge's decision does not accurately reflect what the respondent said in her refusal decision. It is clear that the word "not" is missing before the word "sufficient". However, the grounds argue that the Judge had failed to consider that even a supporter or member of the Gülenist Movement, or someone perceived as such, could be at risk. For example, the Country Policy and Information Note ('CPIN'): Turkey: Gülenist Movement, February 2022, §2.4.33 and §2.4.34 had referred specifically to the risk to teachers and the risk of adverse treatment for those perceived as supporters, although as Mr Avery points out, the same passages refer to the arbitrariness of adverse treatment.

6. The grounds continue that the Judge had erred in her approach in assessing the appellant's credibility. Having made adverse credibility findings about the appellant at §51, the Judge then went on to attach limited weight to the two separate aspects of the documentary evidence, the first being the convictions or claimed convictions on terrorism grounds, the second related to the medical evidence, all of which the Judge attached limited weight to. As a consequence, the appellant argued that the Judge had failed to consider the evidence in the

round and had fallen into what is termed the 'Mibanga' error (see Mibanga v SSHD [2005] EWCA Civ 367). The appellant also argued that the Judge had failed to consider the appellant as a vulnerable witness, which might explain discrepancies in his evidence, particularly his inability to recall specific dates as to his imprisonment and release. Judge of the First-tier Tribunal Judge Monaghan granted permission on all grounds on 7th September 2022.

Discussion and conclusions

7. I do not recite the parties' submissions except to explain why I have reached my decision.

8. I accept two of Mr Avery's points. The first is that a judge is not required to assess evidence in a particular order. The second is how the 'Mibanga' principle applies in practice may vary, see: QC (verification of documents; Mibanga duty) China [2021] UKUT 00033 (IAC). However, I accept that the Judge did err when considering whether the appellant had a well-founded fear of persecution, when the respondent had accepted that the appellant had been a teacher at a Gülenist-linked school and the CPIN 2022 had specifically referred to increased risks for teachers. I accept Ms Nnamani's submission that the Judge did not adequately engage with the specific risk to those perceived as Gülenist members, regardless of the level of actual or perceived sur place activity.

9. On the issue of the appellant's vulnerability, Ms Nnamani, who appeared before the Judge, said that she had specifically raised the issue of the appellant's vulnerability with the Judge. Moreover, the Judge had been unarguably conscious of the issue, referring to the appellant's diagnosis of PTSD, albeit ascribing a particular alternative reason for it. The reference to PTSD is at §52 of the decision. I am conscious that the Judge does not necessarily have to refer to the Joint Presidential Guidance Note No 2 of 2010, but nevertheless here, the issue was specifically raised; the appellant is accepted as suffering from PTSD; and the assessment of credibility was based, in a large part, albeit not exclusively, on the appellant's ability to recall dates of various events. I am not satisfied that the Judge had adequately engaged with the question of vulnerability and the effect on the evidence (see §62 of SB (vulnerable adult: credibility) Ghana [2019] UKUT 00398 (IAC). Where, as here, the assessment of credibility is based, even in part, on evidential consistencies in dates, that in my view amounts to a material error.

10. I turn to the challenge to another aspect of the Judge's assessment of credibility and whether he committed a **'**Mibanga**'** error, in other words because the Judge assessed the appellant as not credible, he impermissibly discounted the remainder of the evidence. I accept Mr Avery's point that the order in which the Judge considered the different strands of evidence is not relevant, and what is critical is whether the Judge considered all of the evidence in the round. I accept Ms Nnamani's submission that the Judge did not consider the evidence in the round, and instead attached little weight to parts of the evidence as a result of earlier adverse credibility findings. It is worth reciting §51 in full:

> "51. The appellant has submitted a number of documents in support of his claim including arrest warrants and court documentation; printouts said to be from the government website and a letter from a friend. In considering that documentation I apply Tanveer Ahmed. Despite the respondent indicating that no weight was attached to these documents, the appellant

> has failed to provide any documentation to attempt to authenticate the same. I have made significant adverse credibility findings in respect of the appellant. In the light of the same, I attach very limited weight to these documents and find a letter from the appellant's friend to be self-serving.

11. The last two sentences illustrate the Judge's failure to consider the evidence in the round.

Disposal of the appeal

12. I turn to the question of disposal and how I should re-make matters. I remind myself of the Court of Appeal's decision in AEB v SSHD [2022] EWCA Civ 1512 and the nature and the extent of the necessary fact-finding, (see §7.2(b) of the Senior President's Practice Statement). Mr Avery points out that ordinarily where there are no preserved findings, I should remit remaking (see: §7.2(b) of the Senior President's Practice Statement). Ms Nnamani raised concerns about a greater delay if remaking is conducted by the First-tier Tribunal rather than this Tribunal, in the context of the appellant's mental health issues. However, she was not able to confirm precise dates as to current listing at Taylor House (the FtT hearing centre) and I have no sense that there would be a greater delay in the FtT remaking the appeal than this Tribunal. In the circumstances, I am satisfied that §7.2.(b) is met and that it is appropriate to remit remaking to the FtT.

Notice of Decision

The decision of the First-tier Tribunal contains material errors of law and I set it aside, without preserved findings.

In doing so, I note the respondent's previous statement in its refusal decision dated 13th May 2021, §61, which is unaffected by this decision, that: "It is considered that although it is not accepted that you are a Gulenist, it is possible that due to your employment you may have been perceived as such. However, objective country information states that 'establishing membership of the movement is not sufficient to be recognised as a refugee."

I remit this appeal to the First-tier Tribunal for a complete rehearing.

Directions to the First-tier Tribunal

This appeal is remitted to the First-tier Tribunal for a complete rehearing with no preserved findings of fact.

The remitted appeal shall not be heard by First-tier Tribunal Judge Cohen.

The anonymity directions continue to apply.

J Keith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

23rd June 2023