



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

Appeal Number: IA/47780/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 27<sup>th</sup> October 2014**

**Decision & Reasons  
Promulgated**

**On 5<sup>th</sup> December 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**MR ALI CAKALLIK  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms S Panagiotopoulou, Trott & Gentry LLP Solicitors

For the Respondent: Mr T Melvin, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Turkey born on 10<sup>th</sup> April 1974 and he appealed against a decision promulgated on 2<sup>nd</sup> July 2014 by First-tier Tribunal Judge Warren L Grant, who dismissed the appellant's appeal with respect to Appendix FM of the Immigration Rules, on human rights grounds and under the Refugee Convention. At the First Tier Tribunal hearing the grounds of appeal were amended to include Article 3 and according to Ms Panagiotopoulou also the Refugee Convention.
2. Application for permission to appeal was made as in particular Ms Panagiotopoulou submitted that the judge had erred in his approach to the evidence. For example the appellant had not been asked questions about his failure to advise the expert, Dr Smith of his route via Germany and the

judge had not given the appellant the opportunity to explain although discrepancies in his evidence were identified.

3. I dismiss the challenge to the determination on the basis of comparison with the brother's claim because the appeal of the brother was a completely separate consideration by the Secretary of State and the judge had no idea as to what evidence was before him.
4. I find that the judge did make an overall credibility assessment and at [15] rejected the appellant's claim. However, the judge made a key finding with regard to the credibility of the appellant's evidence with reference to the expert report but the judge failed to raise his criticism of the evidence with the appellant despite basing a key plank of his assessment on the failure of the appellant to tell the expert that he did not come straight from Turkey to the UK and that the appellant had misled the expert. These were not put to the appellant.
5. Further, the judge referred to paragraph 63 to **IK** stating that he had no reason to be concerned on return to Turkey because he had never been brought before a court, let alone been convicted of an offence, and it was not believed that as an ethnic Kurd he faced ill-treatment on return.
6. It was the appellant's claim that he had been arrested in Turkey and detained on a number of occasions. The findings on credibility are important and link to the judge's assessment of the protection claim bearing in mind that the judge had accepted that this was a relevant matter for him to consider. The findings of credibility would have an impact on the findings in relation to past persecution and the assessment of risk on return, in the light of **IK (Returnees, Records, IFA) Turkey CG [2004] UKIAT 00312**.
7. The judge merely stated at paragraph 18:

"I refer to paragraph 63 of **IK**. He has no reason to be concerned on return to Turkey because he has never been brought before a court, let alone been convicted of an offence. I do not believe that as an ethnic Kurd he faced ill-treatment on return. I do not find that he faces ill-treatment on account of his ethnicity or his faith."
8. Paragraph 63 of **IK** refers to the computerised GBTS system which refers to outstanding arrest warrants, previous arrests, restrictions on travel abroad and possible draft evasion, refusal to perform military service and tax arrears. The arrests were distinguished from detentions by the security forces followed by release without charge. It was also stated that GBTS was fairly widely accessible and available to the border police booth in Istanbul Airport and elsewhere in Turkey to the security forces. On considering the claim there would need to be full consideration in relation to **IK**.

9. Overall the judge appeared to reject the medical evidence that the appellant experienced mental health problems and stated

*'He may well be suffering from some sort of depression but he is receiving treatment and counselling and the basis for his depression is unclear given my findings relating to Dr Smith's report'.*

10. The judge found there were no compelling circumstances in order to consider the Article 8 claim outside the immigration rules. Bearing in mind that I find the credibility findings are unsafe this in turn reflects on the lack of an assessment of the Article 8 matter outside the rules.
11. I therefore set the decision aside on the basis that there has been a material error of law.
12. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (ii) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

Signed

Date 2<sup>nd</sup> December 2014

Deputy Upper Tribunal Judge Rimington