



The Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal number: AA/06799/2014

THE IMMIGRATION ACTS

Heard at Field House  
On March 6, 2015

Determination issued  
On March 9, 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

EC

(ANONYMITY DIRECTION MADE)

Respondent

**Representation:**

For the Secretary of State: Ms Everett

For the Respondent: Mr Collins

**DETERMINATION AND REASONS**

1. Whereas the original respondent is the appealing party, I shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.
2. The appellant is a citizen of Turkey. The appellant first entered the United Kingdom on January 8, 2012 and on arrival she claimed asylum. She attended a substantive interview on January 18, 2012. The respondent refused her application on July 22, 2014 and at the same time took a decision to remove her from the United Kingdom

by way of directions under paragraph 10A of Schedule 2 to the Immigration Act 1971.

3. The appellant appealed under section 82(1) of the Nationality, Immigration and Asylum Act 2002.
4. The matter came before Judge of the First-tier Tribunal Callender Smith (hereinafter referred to as the "FtTJ") on December 12, 2014 and in a decision promulgated on December 31, 2014 he allowed the appeal on asylum grounds and under articles 2 and 3 ECHR.
5. The respondent lodged grounds of appeal on January 8, 2015 and on January 20, 2015 Judge of the First-tier Tribunal Levin gave permission to appeal finding there were arguable grounds that the FtTJ had erred by failing to explain why the respondent had lost the case and by failing to consider the medical evidence in the round.
6. The matter came before me on the above date and the parties were represented as set out above. The appellant herself was not in attendance.

#### **ERROR OF LAW SUBMISSIONS**

7. Ms Everett adopted the grounds of appeal and submitted that the FtTJ had erred by relying solely on the medical evidence and by failing to make findings on issues in dispute. She argued that the respondent was unclear why the appeal had been allowed and the FtTJ failed to engage with the refusal letter.
8. Mr Collins, in lengthy submissions, argued there was no error in law. He submitted as follows:
  - a. He referred me to the decision of **Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC)** that had been raised by the respondent in her grounds of appeal. He submitted the FtTJ had given reasons for his findings and he referred me to the whole structure of the determination. The FtTJ was fully aware of both parties' positions and he had referred to the appellant's claim, the respondent's response, the medical and country evidence as well as the appellant's written statement before he made any findings. At paragraph [23] of his determination the FtTJ made clear he intended to review all of the evidence before making a decision. Mr Collins submitted the FtTJ accepted the appellant's account (paragraph [32(b)] of the determination) and took into account the medical evidence as to why the appellant did not give evidence. Having considered the evidence he then found at paragraph [32(g)] that she had suffered as claimed and she benefited the benefit of the doubt and he stated there were very few discrepancies.
  - b. The respondent had quoted **Mibanga v SSHD [2005] EWCA Civ 36** but he submitted that this did not affect this appeal because at paragraph [16] of his determination the FtTJ considered the evidence and made findings and only then looked at the medical evidence. If the FtTJ had allowed the appeal solely on the medical report then respondent would have a point but that is not what happened here. The FtTJ had given the report weight but did not lose sight of what the appellant's case was.

- c. The respondent referred to the case of **HH [2007] EWCA Civ 306** in her grounds but this case was distinguishable as that case involved an attack on the credibility findings whereas in the appeal the FtTJ had considered the medical evidence and found the report supported the appellant's explanation at interview. The interview was extremely traumatic particularly because of the manner in which questioning was undertaken. Despite the nature of questioning the FtTJ found her to be a credible witness in light of country and medical evidence.
9. Miss Everett responded briefly to those submissions and submitted that if the FtTJ had been as detailed as Mr Collins then the respondent would have known why they lost the case and whilst the challenges today were not the best she maintained the FtTJ had not given cogent reasons.
10. Having considered the submissions I indicated to both parties that I was satisfied there was no error in law and I would give written reasons for my decision.

#### **ERROR OF LAW ASSESSMENT**

11. This was an asylum application from an appellant who claimed she had been regularly arrested and assaulted both physically and sexually by the Turkish Gendarme. This abuse was said to have occurred over 3 ½ year period and was linked to her husband's connections to the PKK.
12. The FtTJ allowed the appeal and the respondent appealed the decision on two grounds namely lack of reasons and taking the decision based on content of the medical report only.
13. The respondent referred in her grounds to the decisions of **Mibanga v SSHD [2005] EWCA Civ 36**, **HH [2007] EWCA Civ 306** and **Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC)**.
14. Having heard Ms Everett's submissions I raised with her the fact that the FtTJ had considered all of the evidence and had not merely allowed the appeal based on a medical report. Her response to this was that the FtTJ had failed to engage with the respondent's submissions contained in the refusal letter.
15. Mr Collins addressed this issue in his response and quite properly took me through the FtTJ's determination. There was no suggestion the FtTJ had recorded facts incorrectly and I am satisfied that he demonstrated engagement with the issues particularly in paragraph [32] of his determination.
16. The FtTJ demonstrated he had considered the respondent's concerns but he rejected those concerns when he stated in paragraph [32(b)],  
"I should make it clear that I believe the incidents she has described did occur and kept occurring".
17. The FtTJ then explained in paragraph [32] (d), (e) and (f) why he accepted her account and all those findings were open to him. He also made clear in paragraph [32] (b) and (g) that the report from the Helen Bamber Foundation supported her case and explained why she may have been unable to give as clear and concise account as the respondent was seeking. He concluded in paragraph [32](g)-

“... Given the background trauma I find she has clearly suffered, where there are discrepancies in her account then she merits the benefit of the doubt. In fact, there are very few discrepancies and her account taken as a whole has a high degree of consistency”.

18. I therefore am satisfied the FtTJ made findings that were open to him and gave reasons for his findings. A full reading of the determination would make it clear to anyone why the appeal was allowed. The FtTJ made it clear he accepted her claims and did this in light of her own, medical and country evidence.
19. I also reject the submission that the decision was made based on the medical report alone. At the beginning of his findings the FtTJ accepts her account (paragraph [32(b)] and found the medical report assisted him in assessing her claim.
20. There is no merit to these grounds of appeal and I dismiss the appeal.

**DECISION**

21. There was no material error. I uphold the original decision.
22. The First-tier Tribunal did make an anonymity direction pursuant to rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 and I see no reason to alter that order.

Signed:

Dated: **March 6, 2015**

Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT  
FEE AWARD**

I make no amendment to the order made in the First-tier.

Signed:

Dated: **March 6, 2015**

Deputy Upper Tribunal Judge Alis