Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/08394/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Decision Promulgated**
On 5th August 2015	**On 13th August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

S A
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Sirikanda, Duncan Lewis, solicitors
For the Respondent: Mr C Avery, Senior Home Office presenting Officer

DECISION AND REASONS

1. I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant, reserving the anonymity order made at first instance.

2. This is an appeal by the appellant against the decision of First Tier Tribunal Judge Bennett promulgated on 10 February 2015 which dismissed the appellant's appeal on all grounds.

Background

3 The appellant is a Turkish national, born on 12 May 1972. On 1 October 2014, the respondent refused the appellant's application for asylum, made on the basis of her race and her political opinion.

The Judge's Decision

4 The appellant appealed to the First Tier Tribunal. First Tier Tribunal Judge Bennett ("the judge") dismissed the appeal against the respondent's decision. The judge considered background information and decided that the circumstances had changed since the country guidance case of IK (Turkey) CG 2004 UK IAC 00312 and the Court of Appeal decision in Y (Turkey) 2008 EWCA Civ 511.

5 Grounds of appeal were lodged and on 11 March 2015, First Tier Tribunal Judge Baker gave permission to appeal stating *inter alia* that:

> *"3 It is arguable that the judge materially erred in concluding that extant country guidance authority…required revision in the absence of evidence sighted by the judge to depart from the country guidance.*
> *"4 Furthermore, it is arguable that the judge's conclusions at paragraph 22(a) of the decision that the appellant would not have been abused in detention, relying on cameras installed which undermined the claims that she would have been abused due to the risk of discovery by the authorities' activities, arguably failed to take account of evidence before him cited in the permission grounds at paragraph 13.*
> *"5 It is arguable as submitted in paragraphs 19 and 20 that the evidence relied on by the appellant was not addressed, amounting to a material error of law.*
> *"6 Ground 2 – it is arguable that the judge's conclusions at Paragraph 22(h) of the decision as to lack a plausibility of the claimed treatment in detention of the appellant give weight to immaterial considerations."*

The Hearing

6 Ms Sirikanda, Solicitor for the appellant, adopted the terms of grounds of appeal and argued that the judge had failed to give adequate reasons for departing from country guidance in IK (Turkey) CG 2004 UK IAC 00312, and that the judge had applied an incorrect standard of proof, lending weight to one source of background materials and ignoring more up to date background materials placed before the judge. Mr Sirikanda argued that the judge had made a flawed assessment of plausibility and overlooked material background evidence and provided inadequate reasoning to support his findings of "*inherent implausibility*" and "*inherent unlikelihood".*

7 Mr Avery, for the respondent, argued that there is no material error of law contained in a carefully worded, carefully structured and detailed decision and that the weight to be given to a particular piece of evidence (including the background materials) is something for the judge at first instance. He said that the judge had set out detailed findings in fact and explained how he had drawn those findings in fact from the evidence presented. He drew my attention to the fact that the judge had made alternative findings on the hypothesis of taking the appellant's case at its highest.

8 In SG (Iraq) v SSHD; OR (Iraq) v SSHD [2012] EWCA Civ 940 the Court of Appeal said that the Country Guidance procedure was aimed at arriving at a reliable and accurate determination and it was for those reasons, as well as the desirability of consistency, that decision-makers and tribunal judges were required to take country guidance determinations into account, and to follow them unless very strong grounds supported by cogent evidence, were adduced justifying their not doing so (paras 43 – 50).

9 In **TM, KM and LZ (Zimbabwe) (2010) EWCA Civ 916** the Court of Appeal said that the Tribunal "*must treat as binding any country guidance authority relevant to the issues in dispute unless there is good reason for not doing so, such as fresh evidence which casts doubt upon its conclusions, and a failure to follow the country guidance without good reason is likely to involve an error of law. This is made plain by*" paragraphs 12.2 and 12.4 *"of the Practice Direction: Immigration and Asylum Chambers of the First-tier and Upper Tribunal 2010 (which replace materially identical provisions in the earlier PD issued in 2007)*".

10 In **OM (AA(1) wrong in law) Zimbabwe CG [2006] UKAIT 00077** the Tribunal said that country guidance stands until it is replaced or found to be wrong in law. Where a country guidance case is replaced because of changed country conditions or because further evidence has emerged, that will not mean that it was an error of law for an immigration judge to have followed it up to that point. Where, however, a country guidance case is found to be legally flawed the reasons for so finding will have existed both before and after its notification. It is a determination inconsistent with other authority that is binding on the Tribunal. In those circumstances, which will be encountered only rarely, any determination of an appeal decided substantially on the basis of that country guidance will be legally flawed also and cannot stand.

11 Between [12] and [17], the judge discussed the country guidance cases, demonstrating that he was clearly aware of them but at [16], he states "*I am not satisfied that the circumstances obtaining in Turkey when in March 2014 as they were in 2003 at the time when A was decided or in 2004 when IK was decided…".* In reaching that conclusion, he places reliance on extracts from only two of the items of background materials, placing particular reliance on a US State Department report, which did not form part of the evidence relied on by either party, and on a report from

the Canadian Immigration and Refugee Board report of 8 June 2012. The judge did not have expert evidence and had conflicting accounts from different sources of background materials.

12 Failing to follow country guidance is an error of law. In this case, I find that it is a material error of law which tainted all of the findings made by the judge and requires the decision to be set aside.

13 The failure of the First Tier Tribunal to follow country guidance simply because of the passage of time constitutes a clear error of law. I consider this error to be material since had the tribunal taken proper account of country guidance cases, the outcome could have been different.

Remittal to First Tier

14. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First Tier Tribunal if the Upper Tribunal is satisfied that:

> *(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or*
>
> *(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal*.

15. In this case I have determined that the case should be remitted because none of the findings of fact are to stand and the matter will be a complete re hearing.

16. I consequently remit the matter back to the First-tier Tribunal to be heard before any First-tier Immigration judge other than First Tier Tribunal Judge Bennett.

Decision

17. The making of the decision of the First-tier tribunal is tainted by a material error of law.

18. I set aside the decision.

19. I remit the case to the First-tier Tribunal to be heard of new.

Signed Date 7th August 2015

Deputy Upper Tribunal Judge Doyle