



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: AA/11279/2014

THE IMMIGRATION ACTS

Heard at Field House

On 25th January 2016

Decision & Reasons

Promulgated

On 2nd February 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

YG

(ANONYMITY ORDER MADE)

Appellant

Respondent

Representation:

For the Appellant: Mr Tarlow a Home Office Presenting Officer

For the Respondent: Ms Namani of Counsel

DECISION AND REASONS

Background

1. For the purpose of continuity with the determination in the First-tier Tribunal I will hereinafter refer to the Secretary of State as the Respondent and YG as the Appellant.
2. The Respondent refused the Appellant's application for asylum or ancillary protection on 28 November 2014. His appeal against the

refusal of asylum and humanitarian protection was allowed by First-tier Tribunal Judge Gandhi (“the Judge”) following a hearing on 1 June 2015.

3. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to preserve the anonymity of the Appellant who is a minor.

The grant of permission

4. First-tier Tribunal Judge Astle granted permission to appeal (24 November 2015) on the grounds that it is arguable that the Judge:
 - (1) speculated;
 - (i) “...that the Appellant would need emergency travel documents to be removed” and “failed to explain why the Appellant’s expired passport would not be adequate if he could not be removed”,
 - (ii) “...than an appointment made with an unknown individual was evidence of the Appellant’s severe mental health problem”,
 - (iii) by giving “weight to immaterial matters, namely the mental health resources of the NHS”, and
 - (iv) by failing “to refer to the VAF and inconsistencies in the evidence”; and
 - (2) failed to give adequate reasons for her conclusions.

Respondent’s position

5. Mr Tarlow conceded that his strongest point related to [3](1)(i) above and that the other grounds only came into account if I agreed with him on that point.

Appellant’s position

6. There has been no challenge to the rest of the findings summarised in [106] (a-m) of the decision. The emergency travel document issue is irrelevant if the Appellant was to return to his home area. The findings must be read in conjunction with [133] and [72-78] of IK (Returnees – records – IFA) Turkey CG [2004] UKIAT 00312 and IA and Others (Risk, guidelines, separatists) Turkey CG [2003] UKIAT 00034.

The Judge’s findings

7. The following findings of the Judge [106] were not challenged;
 - “a) The appellant was arrested twice.
 - b) During the second arrest the authorities knew of his first arrest.
 - c) He was questioned about PKK activities.

- d) He has had his fingerprints taken and signed a blank piece of paper.
- e) He was asked to report after his second release from detention.
- f) He was not detained for long.
- g) He reported on 4 occasions.
- h) With the payment of a bribe he was however able to stop reporting.
- i) He has not been charged and there is no evidence of an arrest warrant.
- j) He lives in an area of conflict.
- k) His friend was arrested and mentioned the appellant's name upon arrest.
- l) His father is still reporting to the police.
- m) His parents were stopped at the airport on their return to Turkey."

Case law

8. IA guides me to the view, among other things, that where a person is suspected of membership of the PKK or providing support to it he will be handed over to the Anti-Terrorist Branch where he would face a real risk of persecution or breach of his human rights.
9. IK guides me to the view, among other things, that the computerised GBT system comprises amongst other things outstanding arrest warrants, previous arrests, possible draft evasion, and refusal to perform military service. Arrests are distinguished from detentions as they require some Court intervention. The system is fairly widely accessible and in particular to the border police and booths in Istanbul airport and elsewhere in Turkey to the security forces. If a person is held for questioning on arrival or subsequently and the situation justifies it some additional inquiries could be made of the authorities in his local area where more extensive records indicate either manually or on computer and inquiry could also be made to the antiterrorist police or MIT. Returning on an emergency travel document, or having a material entry in the GBTS or on the border control information means there is a real risk the authorities will be put on notice of an unsuccessful asylum claim that could lead to him being sent to the airport police station for further investigation. The escalation of violence following the ending of the PKK ceasefire reinforces the view that the risk to Kurdish returnees of ill treatment by the authorities may be greater if his home is in a conflict area. The use of torture is long and deep seated in the security forces and it will take time and a continued and determined effort to bring it under control in practice.
10. MY (Turkey) v Secretary of State for the Home Department [2007] EWCA Civ 410 guides me to the view, among other things, that IA and IK did not say that anyone suspected of connection to, or sympathy with, the PKK was at real risk of persecution. The assessment of risk depended upon a large number of factors, one of which was the level of a claimant's known or suspected involvement with the PKK. Suspected

connection or sympathy with the PKK was capable of showing risk, but was not determinative.

11. SD (Turkey) v Secretary of State for the Home Department [2007] EWCA Civ 1514 guides me to the view, among other things, that in IK, the starting point of the enquiry had to be whether there would be information about a returning failed asylum seeker in his home area. The issue was whether that record was reasonably likely to lead to persecution outside his home area. Thus, the first question was whether the information from the home area would arrive at the point where the Claimant would first be questioned at the airport. The absence of any record under the GBTS system was not dispositive as to the means which could be deployed for enquiring about the background of a particular returning failed asylum seeker. IK revealed that on returning with emergency documentation, there was a real risk that someone in the position of the Claimant would be asked questions as to why he left Turkey and the circumstances of his return. It was also accepted that, when individuals were asked about the circumstances in which they left Turkey and in which they were returning, they were not expected to lie.

Discussion

12. In my judgement there is no merit in [3](1)(i) for the following reasons. The assessment of risk within IK is based on a combination of factors rather than any one individual fact. It is not a checklist. The Judge was entitled to take the view that when combined (even excluding [106 (n)]) the Appellant was at real risk of harm on his return. He should not have to lie on his return about his reason for having been here. As a child it is reasonably likely he will be asked about his parents. He should not have to lie about them. It is reasonably likely the link to his father (who was stopped at the airport on return) would be established, and a link to his father's problems and his own past revealed. The Judge was entitled to find that (irrespective of the document he returned on) this would place the Appellant at real risk of ill treatment.
13. It is clear that [3](1) (ii and iii) have no impact on the asylum claim.
14. In my judgement there is no merit in [3](1)(iv) for the following reasons. The Judge does not have to refer to every piece of evidence. The fact the Appellant stated he was coming to visit his sister for 3 weeks is irrelevant. No adverse consequences can be drawn from the fact that his parents returned to Turkey as they made whatever decision they felt was appropriate for their circumstances. Contrary to that which was asserted in the grounds, the Judge was aware that the Appellant did not claim asylum for 5 months [79] and noted that this affected his credibility but he was a minor at the time and reliant on others so it did not affect it much. I have not been pointed to any unresolved material discrepancies.

15. In my judgement there is no merit in [3](2). The Judge gave detailed reasons for his decision [78 to 101]. He does not have to give reasons for reasons.
16. I am therefore satisfied that the Judge made no material error of law.

Decision:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Signed:
Deputy Upper Tribunal Judge Saffer
31 January 2016