



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

Appeal Number: PA/00609/2016

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 3 January 2018**

**Decision &  
Promulgated  
On 5 January 2018**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SAFFER**

**Between**

**DK  
(ANONYMITY ORDER MADE)**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Markus of Counsel

For the Respondent: Mr Moueety a Home Office Presenting Officer

**DECISION AND REASONS**

**Background**

1. 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 DK or

any of his family members. 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 DK who, as will be seen, has an outstanding asylum claim.

2. The Respondent refused the Appellant's application for asylum or ancillary protection on 31 December 2015. His appeal against this was dismissed by First-tier Tribunal Judge Buckwell ("the Judge") following a hearing on 25 November 2016.

#### The grant of permission

3. Upper Tribunal Judge Plimmer granted permission to appeal (29 June 2017) as it is arguable that the Judge materially erred in failing to;
  - (1) take into account relevant evidence before reaching adverse credibility findings,
  - (2) direct himself to the consistency between the Appellant's account and the background evidence that those linked to peace committees are targeted, and
  - (3) attached determinative weight to the delay in claiming asylum.

#### Respondent's position

4. It was submitted in the rule 24 notice (17 July 2017) that the Judge;
  - (1) gave adequate reasons for finding that the Appellant did not have a profile that would place him at risk,
  - (2) gave adequate reasons for finding that the identity of the attackers had not been established,
  - (3) was entitled to note the lack of evidence to corroborate the alleged kidnapping, and
  - (4) was entitled to find that s8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 applied and the benefit of doubt was not extended to the Appellant.
5. It was submitted orally that the Judge noted [57] that there had been attacks but [60] the Appellant's level of activity was insufficient to place him at risk, and [58] the documents added little weight to his case. The asylum claim was very late. The delay was at the heart of the Judge's decision. Whilst the Judge clearly made an error of law in saying that [56] the Appellant "provided some explanation that he believed his appeal was still in process within the Upper Tribunal but absolutely no evidence was put forward to support that vague account" this was not material given the rest of the findings.

#### The Appellant's position

6. It was submitted that the Judge materially erred in not assessing the risk against the background of over a dozen attacks on members of “peace committees” that were referred to and detailed in the evidence. There was no finding as to how involved the Appellant was in the “peace committee” but the Judge did find that he was involved in “community service” as claimed.
7. The Judge placed determinative weight on s8.
8. The Judge’s comments on the lack of documentary evidence that he had an outstanding appeal [56] were untrue as the Appellant had produced a Notice of Receipt from the Tribunal of such an application (12 December 2014) and a letter from Capita. The Judge also ignored the Appellant’s explanation that he understood he had to wait for his outstanding appeal to be decided before he could claim asylum.

### Discussion

9. In relation to ground 1 and 3, I am satisfied that the Judge materially erred. There was plainly documentary evidence before him of an outstanding appeal and a statement from the Appellant explaining why he thought that this meant he could not claim asylum. It was conceded by Mr Moueety that the error regarding the documentary evidence amounted to an error of law. The Judge placed great weight on this as he refers to the delay in the sur place application as “particularly telling”. Mr Moueety acknowledged that the s8 point was at the heart of the decision. It was material as the Judge placed great weight on this and was plainly wrong. Whilst it is correct that there is no error of law just because a different Judge may have made a different decision, this does not mean that a Judge can ignore relevant evidence or a relevant explanation and then find comprehensively against an Appellant on a point at the heart of the decision.
10. In relation to ground 2, I am satisfied that the Judge was aware [57] that those “involved in the attempted peace process, including Peace Committee members, have found themselves to be the victims of attacks”. He then limits his acceptance of risk [57] “to those who have a politically high profile”. That is not what the background evidence that was before the Judge points at. It makes no delineation on the basis of politics and refers to members and volunteers and activists as being victims. The specifics are detailed in the key passage index that was before the Judge and in the grounds for this application. I am satisfied that it was a material error of law for the Judge to introduce a profile delineation without any apparent evidential basis.
11. I am satisfied that having heard from the representatives that it is appropriate to remit the matter de novo as the errors go beyond those contained within the Presidential Guidance for retention in the Upper Tribunal.

Decision:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I remit the matter to the First-tier Tribunal for a de novo hearing, not before Judge Buckwell.

Deputy Upper Tribunal Judge Saffer  
4 January 2018

A handwritten signature in black ink, appearing to read "Louise Saffer". The signature is written in a cursive style with a large initial "L" and "S".