



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-004106

First-tier Tribunal Nos: PA/52006/2022  
IA/05307/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 2 August 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

**OT  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**The Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr. M. Allison, Counsel instructed by Montague Solicitors  
For the Respondent: Mr. C. Avery, Home Office Presenting Officer

**Heard at Field House on 11 July 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Dieu (the "Judge"), dated 9 August 2023, in which he dismissed the appellant's appeal against the respondent's decision to refuse the appellant's protection claim. The appellant is a national of Turkey who applied for asylum based on his political opinion and his race.

2. I continue the anonymity direction made in the First-tier Tribunal given that this is a protection claim.
3. Permission to appeal was granted by First-tier Tribunal Judge Adio in a decision dated 25 September 2023.
4. There was no Rule 24 response.

### **The hearing**

5. At the outset of the hearing Mr. Avery conceded on behalf of the respondent that the decision involved the making of material errors of law. He accepted that there were inadequate reasons, and that the Judge had failed to give anxious scrutiny to the appellant's appeal.
6. I stated that I was in agreement with this. I set aside the decision of the First-tier Tribunal and remitted the appeal to the First-tier Tribunal to be remade.
7. An application had been made to amend the grounds of appeal. Mr. Avery stated that, while he was aware that an application had been made, it had not been sent to the respondent. His concession that the decision involved the making of material errors of law was based on a reading of the decision and the original grounds of appeal.
8. Given that Mr. Avery had conceded that the decision was unsafe and could not stand, I stated that it was unnecessary for me to consider the application to amend the grounds. I will not address the amended grounds here, but will consider the decision as a whole given the basis on which Mr. Avery conceded that it involved the making of material errors of law. Given his concession, this decision will not be overly long.

### **Error of Law**

9. The decision is very brief. While it runs to six pages, the findings are set out in paragraphs 25(a) to 25(f) and are just over a page in length. These findings do not contain an assessment of the evidence provided by the appellant. I find that the Judge has considered the credibility of the appellant's account without reference to the evidence which was before him.
10. In particular, the Judge has had no regard to the evidence regarding the appellant's family members. A brother, an uncle and a cousin have all been granted refugee status either in the United Kingdom or in France. There has been no consideration of the documents concerning the appellant's family. There has been inadequate consideration of other documentary evidence, including photographs of the gendarme taken at the appellant's home.
11. Further, there is no consideration of the appellant's sur place activities in the United Kingdom or the letter from the HDP confirming his membership. While it is not necessary for a judge to set out each and every part of the evidence, it is clear that the Judge has failed to give anxious scrutiny to the evidence provided by the appellant in support of his claim. I find that this is a material error of law.
12. The Judge further failed to consider the country guidance caselaw. There is no analysis of the case of IK (Returnees - Records - IFA) Turkey CG [2004] UKIAT 00312. Even though the Judge found the appellant's account not to be credible, he still needed to consider the appellant's circumstances with reference to the country guidance case law. As set out at [9] of the grounds, there are factors

which have to be analysed including the appellant's family connections, his Kurdish ethnicity, an acceptance that he had been ill-treated, the lack of a passport, the fact that his family came from the southeast of Turkey and documents which related to sur place activities. I find that the failure to consider the country guidance is a material error of law.

13. In considering whether this appeal should be retained in the Upper Tribunal or remitted to the First-tier Tribunal to be remade I have taken into account the case of Begum [2023] UKUT 46 (IAC). At headnote (1) and (2) it states:

*“(1) The effect of Part 3 of the Practice Direction and paragraph 7 of the Practice Statement is that where, following the grant of permission to appeal, the Upper Tribunal concludes that there has been an error of law then the general principle is that the case will be retained within the Upper Tribunal for the remaking of the decision.*

*(2) The exceptions to this general principle set out in paragraph 7(2)(a) and (b) requires the careful consideration of the nature of the error of law and in particular whether the party has been deprived of a fair hearing or other opportunity for their case to be put, or whether the nature and extent of any necessary fact finding, requires the matter to be remitted to the First-tier Tribunal.”*

14. I have carefully considered the exceptions in 7(2)(a) and 7(2)(b). Given the failure to properly consider the evidence provided, the appellant has effectively been denied a fair hearing. As was agreed between the parties, it is therefore it is appropriate to remit this appeal to be reheard in the First-tier Tribunal.

### **Notice of Decision**

15. The decision of the First-tier Tribunal involves the making of material errors of law and I set the decision aside. No findings are preserved.
16. The appeal is remitted to the First-tier Tribunal to be heard de novo.
17. The appeal is to be heard at Taylor House.
18. An interpreter in Kurdish Kurmanji is to be booked for the hearing.
19. The appeal is not to be listed before Judge Dieu.
20. Mr. Allison submitted that the appellant's representatives were intending to make enquiries to obtain a medical report and had approached the Helen Bamber Foundation. However, the current wait time is between six and nine months. Mr. Allison asked that this be noted so that the First-tier Tribunal is aware that an application may be made for the hearing to be put off until medical evidence has been obtained, given the appellant's mental health problems. I note that this process could not have been commenced earlier given that the appellant was awaiting this appeal.

**Kate Chamberlain**  
Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
**20 July 2024**