Upper Tier Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/05480/2013

THE IMMIGRATION ACTS

Heard at Field House
On 9 April 2015

Decision and Reasons Promulgated
On 15 April 2015

Before

Deputy Upper Tribunal Judge Pickup

Between

ST
[Anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the appellant: Mr J Collins, instructed by Montague Solicitors
For the respondent: Mr P Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, ST, date of birth 5.5.77, is a citizen of Turkey.

2. This is her appeal against the decision of First-tier Tribunal Judge Bennett, dismissing her appeal against the decision of the respondent, dated 17.5.13, to refuse her asylum, humanitarian protection and human rights claims. The Judge heard the appeal on 11.7.14.

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3. First-tier Tribunal Judge Pooler refused permission to appeal on 24.9.14 but when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Kebede granted permission to appeal on 9.1.15.

4. Thus the matter came before me on 9.4.15 as an appeal in the Upper Tribunal.

Error of Law

5. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Bennett should be set aside.

6. In granting permission to appeal, Judge Kebede noted that the grounds, "make various assertions critical of the judge's consideration of the existing country guidance, his assessment of the background information, his adverse credibility findings, his consideration of the medical evidence and his assessment of risk on return, as well as criticising him for including personal comments not based upon the evidence before him. Given the length of the judge's determination (73 pages) and the lack of concise reasoning and arguable lack of clarity therein, the grounds merit further consideration and to that extent are arguable."

7. The Rule 24 response, dated 23.1.15, submits that Judge Bennett directed himself appropriately and that, "the grounds advanced raise no material arguable errors of law that would be considered capable of having a material impact upon the outcome of the appeal and are merely an attempt by the appellant to re-argue (her) failed asylum appeal." It is further submitted that the judge properly considered the evidence before the Tribunal and made reasonable sustainable findings that the appellant has failed to establish to the requisite standard of proof that return to Turkey would expose her to a real risk of persecution for a Convention reason, or a breach of her humanitarian protection rights, or a breach of her human rights. "Looking at the determination holistically although it is a determination that is unorthodox in style and length, nevertheless the respondent will respectfully submit that the First-tier Tribunal Judge has produced a detailed and comprehensive determination which considers all material aspects of the appellant's claim and evidence and makes findings that are properly open to him on the evidence and provides sound reasons to support those findings. As regards the First-tier Tribunal Judge's findings on credibility the respondent will submit that when assessing credibility it is for the judge to determine what weight to place on the evidence before him and it is submitted the adverse credibility findings made were properly open to him on that evidence. The lengthy grounds advanced are in mere disagreement with the negative outcome of the appeal."

8. Some of the grounds are rather imprecise and generalised, without identifying the particular error of law said to infect the decision. Following Nixon (permission to appeal: grounds) [2014] UKUT 00368 (IAC), the First-tier Tribunal and the Upper Tribunal can be expected to deal brusquely and robustly with any application for permission that does not specify clearly and coherently, with appropriate particulars,

the error(s) of law said to contaminate the decision under challenge. Besides placing unnecessary demands upon the judiciary, poorly compiled applications risk undermining the important value of legal certainty and causing unfairness to the other party. Further, appeals should not be mounted on the basis of a litany of forensic criticisms of particular findings of the First-tier Tribunal, whilst ignoring the basic legal test which the appellant has to meet, see VHR (unmeritorious grounds) Jamaica [2014] UKUT 00367 (IAC).

9. Comment has been made in the application and in the refusal and grant of permission to appeal of the extraordinary length of the decision of the First-tier Tribunal, some 73 pages. Whilst valid criticism may be made of a lack of concise reasoning, it does not necessarily follow that the decision is unsustainable, perverse or irrational, or that it discloses material error of law such that it should be set aside. Having taken care to consider the decision in the light of the grounds, I do not agree with Judge Kebede's suggestion that there is a lack of clarity in the decision. Although it takes some time to read and digest, and could and should have been more concise, I find that the decision is very clear and precise, providing cogent reasons open to the judge for the conclusions drawn.

10. From the grounds, which have also been criticised for length, I have identified 7 heads of criticism of the decision of the First-tier Tribunal. Before addressing those grounds, I note that there is no challenge to substantial parts of the decision, including, for example, the finding that ST was not a reliable, credible or truthful witness, and as to the assessment from §53 onwards of the appellant's mental health and suicide risk.

11. Further, I note that the dismissal of the appeal rests on the credibility findings of the First-tier Tribunal, rejecting the appellant's factual claim, for the reasons cited by the judge. Many of the other findings and conclusions in the decision are in the alternative and thus any actual or perceived error of law not material, provided the primary credibility findings are sustainable.

Ground 1

12. At §7 of the grounds §23 of the decision is criticised in relation to the judge's findings as to an operation on the appellant's ear. Mr Collins conceded in his oral submissions that it was not the strongest point.

13. In fact, the grounds substantially misstate the finding made by the judge. What the judge did not accept, for cogent reasons based on the evidence before the Tribunal set out in the decision, was the assertion that the appellant had an operation on her ear in February 2011; he found it was in fact around 2009. The appellant case relied on an injury to the ear arising from mistreatment by the authorities between 2011 and 2013 and thus it was highly relevant to the credibility assessment.

14. Neither was the judge ignorant of the appellant's several physical and mental health challenges, as is suggested in this ground. The judge accepted that there had been a

serious operation for a severe condition in April 2011. At §37 the judge accepted the medical findings of Dr Garwood there listed, and accepted that there was a reasonable likelihood that at some time in the past the appellant has been subjected to physical violence sufficient to cause the scars described. In many respects the judge's treatment of the various physical and mental challenges of the appellant is sympathetic. However, the judge justifiably pointed out the deficiencies in the medical and other evidence as to *when* such injury occurred or disability occasioned. At §41 the judge explained why he did not accept that the appellant's physical health and psychiatric condition had been shown to be attributable to any alleged mistreatment in the period 2011-2013, which was highly relevant to the credibility assessment of the appellant's factual account.

15. In the circumstances, there is no merit in this first ground, which discloses no error of law.

Ground 2

16. The second ground, set out between §8 and §12 of the grounds, is the only ground in my view with any potential merit. The complaint is that the judge failed to follow the country guidance decision of IK (Turkey) [2004] UKIAT 00312. The judge addressed this both at §24 to §29 of the decision, giving reasons for departing from the guidance, and, in the alternative, considered most if not all of the factors in IK elsewhere in the decision.

17. Pointing first to the age of IK, decided some 10 years ago, the judge set out at some length, perhaps unnecessarily lengthy, the ratios of IK and A (Turkey) [2003] UKAIT 00034, and the country evidence upon which they were based. At §26 the judge found that the country evidence before him did not justify the conclusion in IK that torture continues to be endemic in Turkey. The judge went on at §26 to point out that there was nothing in the current country evidence to indicate that torture was a systematic or pervasive technique of law enforcement agencies in Turkey. The judge cited extracts from 2013 reports to the effect that such practises are prohibited by the constitution and law and that human rights organisations had reported allegations of torture and abuse, but not in places of detention, but rather during demonstrations and transfers to prison. That was, the judge found, important, as there was a distinction to be drawn between detention and arrest. The judge concluded that there was nothing to indicate that torture in places of detention was systematically employed. After reviewing the evidence, the judge concluded at §28 that the circumstances currently prevailing in Turkey and between 2011 and 2013 were not as those prevailing in 2003 or 2004 when A and IK were decided. The judge then set out paragraph by paragraph a summary of his reasons for reaching that conclusion. The judge's own experience, cited at the end of §28 was irrelevant, but nothing material arises from this, as he made clear that this observation was not relied on as a foundation for the conclusion reached.

18. By the end of §28 the judge concluded that he was not satisfied that torture and physical abuse of persons in places of detention in Turkey is reasonably likely to occur, either now or back in 2011 to 2013.

19. The matters set out in §9 and §10 of the grounds are not material to the decision.

20. Whilst a different judge may have reached a different conclusion, it is open to the First-tier Tribunal Judge to depart from a country guidance case, provided there is good reason for doing so. Another Tribunal may not agree with the distinction made by Judge Bennett, but given the careful, detailed, explanation, I do not find the conclusion either irrational or perverse. The judge has given cogent reasons open to him on the evidence cited for departing from the country guidance case. Mr Collins' astonishment at the temerity of the judge to depart from the country guidance case law does not mean that to do so on the facts of this case was "misguided and simply perverse," of a "frolic entirely of the Immigration Judge's own making," as claimed in the grounds.

21. In the circumstances, I find no merit in this second ground of appeal.

Ground 3

22. This complaint, set out in a few lines in §13 of the ground, suggesting that the judge speculated in §31 and §32 as to identity of the biological father and the circumstances of conception, is not material to the outcome of the appeal and discloses no error of law. The judge embarked on this issue when considering the very young age of the appellant when ST was conceived. The judge reached the conclusion that whilst it was possible that the woman at the appeal hearing was not the person identified in the documents referred to, he was satisfied that it was reasonably likely that she is who she claims to be and is the mother of ST. The reason for consideration of the parentage of ST was, as made clear in §31, given the absence of evidence and the young age of the appellant at which he was conceived, at which age in the UK she would have been considered the victim of rape, the judge was not satisfied that the circumstances were not traumatic, either physically or psychologically or both, and that she may have been raped or abused by one or more individuals. It is not entirely clear, but it may have been a possible causation as to the appellant's past and present mental and physical health challenges. This discussion was probably more speculative than probative, but in fact nothing significant turns on the conclusion.

Ground 4

23. This complaint, set out at §14 and §15 of the grounds addresses the credibility findings in relation to the appellant. To some degree the argument is circular, suggesting that the findings are "wholly unsustainable because they are predicated on the Immigration Judge's misguided belief that arbitrary detention and ill-treatment did not take place in Turkey in 2010 or 2011, which harks back to Ground 2 and the judge's departure from the country guidance case law. Further, the ground is finds fault with some aspects of the credibility findings whilst ignoring the larger

and overwhelming picture as to why the judge found, taking the evidence as a whole, the appellant's factual case was not credible. The ground also substantially misstates the judge's actual findings and the evidence relied on, which drew a distinction between mistreatment at demonstrations or transfers to prison and noted no allegations of mistreatment in detention, the appellant claiming to have been mistreated during detention at the Vatan Street headquarters.

24. Complaint is made about §35(d)(2) of the decision, which is characterised in the grounds as a belief on the part of the judge that only high profile political activists are of adverse interest to the authorities or susceptible to intimidation and pressure. It is said that this "flies in the face of all the learning about how the Turkish authorities operate." However, the grounds fail to point to the specific evidence to support that sweeping generalisation.

25. The grounds also, again, misstate what the judge stated. At this point of the decision the judge reached the conclusion, as part of the assessment of the appellant's credibility, that there was "an inherent lack of likelihood" that after being allegedly mistreated in detention the authorities asked her to act as an informant to obtain information linking BDP with the PKK. The judge went on to set out his reasons for this part of the credibility findings, including that when he considered her then psychiatric problems, including auditory halluincations, had lost the sight in one eye and was continuing to suffer from the consequences of the brain operation, it would have been obvious to the authorities that she was in poor health, both physically and mentally.

26. I find that the judge has provided cogent reasons, open to him on the evidence, to reach the conclusion that he found the appellant neither a reliable nor credible witness. It is this finding which is at the heart of the dismissal of the appeal; the factual basis of the claim was found not credible. In the circumstances, there would have been no particular risk on return, regardless of the country guidance, or need for relocation.

27. In the circumstances no material error of law is disclosed in this ground.

Ground 5

28. The complaint at §16 of the grounds is that at §37 of the decision the judge did not engage with the medical report of Dr Garwood, "and relies on speculation, conjecture and irrelevant considerations in "discounting" the reports conclusions.

29. Once again, the ground makes a sweeping generalisation and fails to provide any particularity to the complaint. More significantly, it, again, substantially misstates the actual findings of the judge. The judge did not discount Dr Garwood's report, or fail to engage with it. It is referred to extensively in the decision, including in the section from §53 as to risk from mental health and suicide. The judge accepted all the factual findings of Dr Garwood, setting out what was accepted in the sub-paragraphs to §37. The judge concluded that there was a reasonable likelihood that at some time in the

past the appellant has been subjected to physical violence sufficient to cause the scars described. However, the judge noted that the evidence did not assist with when such injuries or incidents took place. At §38 the judge pointed out that Dr Garwood's report did not deal with the EPIKRIZ document which contained facts inconsistent with the appellant's account, and gave no consideration to the actual or potential past and present consequences of various matters set out at §38(c) of the decision.

30. What was discounted (at the end of §38) was the conclusion of Dr Garwood "insofar as they are related to the question of whether what she stated as to the events of 2011-2013 was accurate." The judge pointed out that Dr Garwood did not have the EPIKRIZ document indicating that the ear operation took place two years earlier than claimed, in 2009.

31. At §39 the judge reached the conclusion, for cogent reasons open to him on the evidence, that he was not satisfied that he had been told the truth about what happened in 2011-2013 and was not satisfied that there was any police interest in her during that period. She had, at some point in the past, been subjected to severe mistreatment, but the judge could not conclude that this was during the period relevant to the appellant's factual claim. The judge went on at §40 to explain why he concluded that taking the evidence as a whole and in the light of his earlier findings, there was any real likelihood that the appellant would be of any interest to the Turkish authorities on account of alleged past BDP involvement. At §41 the judge summarised those parts of the appellant's case that he was not satisfied about, in essence did not believe.

Ground 6

32. In the light of the above, there is no merit or error of law disclosed in the assertion in ground 6 that at §40 the judge's conclusion at §40 were "misguided and disrespectful." I do not see what is disrespectful, or misguided. This was but one part of the overall findings that the claim that she was or would be of interest to the Turkish authorities was not credible.

Ground 7

33. §18 of the grounds seeks to address the risk on return, suggesting that the judge should have identified risk on return to the home area, rather than risk on return at the airport. However, as this is an alternative finding in the decision, there can be no material error of law in this complaint. I have found not material error in the credibility findings rejecting the appellant's factual account. There was thus no reason for the appellant to have any fear or be at any risk on return. However, as Mr Duffy pointed out in his submissions, the judge has effectively addressed the risk factors within the decision, in particular between §44 and §49, giving reasons for the conclusions reached.

34. In the circumstances, I do not accept the assertion at §19 of the grounds that there has been a "wholesale failure on the part of the judge to analyse the risk factors relating

to the appellant." §19 sets out factors which is it is submitted were not considered, for example the lack of a Turkish passport, which was in fact addressed by the judge at §48. Similarly the consequence for the appellant that ST is a refugee who fled Turkey was considered by the judge, who found that he was an unreliable and uncreditworthy witness, whose account could not be accepted, a finding which has not been challenged in the grounds.

35. More significantly, Mr Duffy points out that the judge's alternative findings from §50 onwards that it would not be unreasonable or unduly harsh to expect the appellant to relocate within Turkey away from her home area entirely undercuts the thrust of the complaint that the judge failed to address the risk factors in the home area. If the appellant can relocate, which was not challenged in the findings, she has no risk in the home area, as she need not return there.

36. In the circumstances, for the reasons set out above, I find no material errors of law in the decision of the First-tier Tribunal. Whilst the decision could and should have been capable of being set out more concisely, it does provide adequate and cogent reasons for the findings and conclusions made, which were open to the judge on the evidence. I do not find that the decision can properly be described as perverse or irrational. Simply put, the judge did not believe the appellant's account and it flows from that that she is not at risk on return, but even if she is at any risk, the unchallenged finding that she can relocate away from the home area means that there is no well-founded fear of persecution or real risk of serious harm on return.

Conclusions:

37. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

Signed

Deputy Upper Tribunal Judge Pickup

Dated **12 June 2015**

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I continue the anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable and thus there can be no fee award.

Signed

Deputy Upper Tribunal Judge Pickup

Dated **12 June 2015**