



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: AA/11662/2014**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 26<sup>th</sup> August 2015**

**Decision and Reasons  
Promulgated  
On 3<sup>rd</sup> September 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

**Between**

**MUHAMMET GILGIL**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms M Thirumanby, Montague Solicitors

For the Respondent: Mr P Nath, Senior Home Office presenting Officer

**DECISION AND REASONS**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Abebrese promulgated on 4 June 2015, which dismissed the Appellant's appeal on all grounds.

## Background

3. The Appellant was born on 2 January 1996 and is a national of Turkey.

4 On 4 December 2014, the respondent refused the appellant's application for asylum and, on 11 December 2014, the respondent decided to refuse to vary leave to remain in the UK and to remove the appellant by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006.

5 The appellant appealed to the First Tier Tribunal. First Tier Tribunal Judge Abebrese ("the Judge") dismissed the appeal against the respondent's decision.

6 Grounds of appeal were lodged and on 7 July 2015, First Tier Tribunal Judge Astle gave permission to appeal, stating *inter alia*:

"It is arguable that in failing to make proper findings in relation to the two detentions claimed in 2010 and the claim that the appellant's fingerprints were taken, the judge erred in law. As the other findings on the asylum claim may be linked to this, those points may also be arguable. Permission is granted..."

## **The Hearing**

7 For the appellant, Ms Thirumanby relied on the grounds of appeal, but before she went further and expanded on those grounds of appeal, Mr Nath said that it would be helpful if he briefly set out the respondent's position.

8 Mr Nath conceded that the determination promulgated on 4 June 2015 contained an error of law because a crucial part of the appellant's evidence at first instance was his witness statement dated 23 March 2015. That witness statement was adopted by the appellant in his oral evidence to the First Tier, but the Judge makes no reference at all to the detail contained within that witness statement in the decision promulgated on 4 June 2015.

## **Analysis**

9 In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

10 The judge's determination promulgated on 4 June 2015 turns almost entirely on the question of credibility. The principal discussion of the evidence of the appellant is contained in [14] of the determination. [12] to [16] bears to be an "*analysis of the evidence...*" but nowhere in the determination is any reference made to the appellant's witness statement or the contents of that witness statement. The Judge does not demonstrate that account was taken of

the evidence presented to the First Tier Tribunal, nor does the Judge adequately set out what evidence he accepts and what evidence he rejects, nor the reasons for either accepting or rejecting the evidence.

### **Finding of Material Error**

11 The failure of the First Tier Tribunal to properly set out and weigh the evidence before it constitutes a material error of law. The Judge has manifestly made inadequate findings of fact. This error is material, since, had the Judge set out a detailed analysis of the evidence and taken account of the contents of the appellant's witness statement the outcome could have been different. That, in my view, is the correct test to apply.

12 I therefore find that material errors of law have been established and the judge's determination cannot stand and must be set aside in its entirety.

### **Remittal to the First tier Tribunal**

13. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25<sup>th</sup> 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.'

14. In this case none of the findings of fact are to stand and the matter will be a complete re hearing.

15. I consequently remit the matter back to the First-tier Tribunal, before any First-tier Tribunal Judge (IAC) other than First Tier Tribunal Judge Abebrese.

### **Decision**

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

**17. I set aside the decision.**

**18. I remit the case to the First-tier Tribunal for determination of new.**

Signed

Date 1<sup>st</sup> September 2015

Deputy Upper Tribunal Judge Doyle