The Upper Tribunal
(Immigration and Asylum Chamber) **Appeal number: AA/05809/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On January 18, 2016	**On February 11, 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MR OKKES GUL
(NO ANONYMITY DIRECTION)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
Appellant Mrs Mighal (Legal Representative)
Respondent Mr Stanton (Home Office Presenting Officer)

DECISION AND REASONS

1. The Appellant is a citizen of Turkey. The appellant came to the United Kingdom on January 22, 2014 and he claimed asylum on January 29, 2014. The respondent refused his application on Mat 20, 2015 under paragraph 336 HC 395 and took a decision to remove him by way of directions pursuant to Section 47 of the Immigration, Asylum and Nationality Act 1986.

2. The appellant appealed this decision on April 1, 2014, under section 82(1) of the Nationality, Immigration and Asylum Act 2002.

3. The appeal came before Judge of the First-tier Tribunal Carroll on September 10, 2015 and in a decision promulgated on October 1, 2015 the Judge refused his application for asylum and humanitarian protection and found he was not in need of protection under ECHR legislation.

4. The appellant lodged grounds of appeal on October 23, 2015 submitting:

    a. The Judge placed far too much weight on the absence of medical evidence bearing in mind this was an asylum application.

    b. The Judge failed to deal with the risks associated with being a draft evader.

    c. The Judge failed to demonstrate any regard to the country guidance decision of IK (Returnees-Records-IFA) Turkey CG [2004] UKAIT 00312.

5. Judge of the First-tier Tribunal White gave permission to appeal on basis the Judge's approach to his Kurdish ethnicity and the fact he was a draft evader. When considered against the risk factors affirmed in IK. He found it arguable the Judge may have erred.

6. The matter came before me on the above date and I heard submissions from both representatives.

SUBMISSIONS

7. Mrs Mighal relied on the grounds of appeal and submitted the Judge had placed far too much weight on the absence of medical and court documents in circumstances where this was an asylum appeal. The Judge also failed to demonstrate any engagement with the country guidance decision of IK and should have considered the risks facing the appellant based on his own acceptance the appellant was a Kurdish draft evader who followed the Alevi religion and had a low political profile. The Judge erred in law.

8. Mr Stanton adopted the Rule 24 response dated November 19, 2015. He submitted the absence of documents was a factor the Judge could have regard to if those documents could have been readily available to the appellant. In any event the Judge found the appellant had been both inconsistent and evasive. Whilst the Judge had not mentioned the case of IK he submitted the Judge demonstrated engagement with the relevant factors and there was no material error.

DISCUSSION AND FINDINGS

9. The respondent had previously accepted the appellant was of Kurdish ethnicity and had previously been involved in low-level activity but she

rejected his claim that he had been detained on three occasions or ill-treated.

10. In considering whether the appellant was at risk of persecution the Judge had to have regard to whether his account of detention was credible because any assessment would have to take this into account. At paragraph [9] of the decision the Judge set out his findings about the appellant's claims and at paragraph [10] he concluded his account lacked credibility and he was not at risk.

11. Two issues arise out of this approach. Firstly, Mrs Mighal submits that the Judge placed too much weight on the failure by the appellant to produce documents and secondly, the Judge failed to demonstrate any engagement with the country guidance of IK.

12. The judge concluded the appellant's claim lacked credibility because:

    a. Despite having twenty or so relatives in the United Kingdom none attended the hearing to provide support for his claim.

    b. He failed to mention in his screening interview that he had been fingerprinted for taking part in a demonstration and in fact claimed he had been fingerprinted for distributing leaflets.

    c. Failure to produce any medical records from Turkey or produce a medical report prepared in the United Kingdom confirming his injuries.

    d. Failure to produce the search warrant.

    e. Failure to produce draft papers that he stated his father had at home.

    f. His account of his second detention was full of inconsistencies.

    g. Even if he had been arrested, which was not accepted, he was released on each occasion without charge.

    h. Failed to apply for asylum at the earliest opportunity.

13. Mrs Mighal's submission was that the Judge's findings were based mainly on his failure to produce documents but this clearly is not the case. In addition to making adverse findings on his failure to produce documents the Judge concluded that he had given inconsistent evidence and failed to apply for asylum at the earliest opportunity.

14. In ST (Corroboration - Kasolo) Ethiopia [2004] UKIAT 00119 the Tribunal said that it was a misdirection to imply that corroboration was *necessary* for a positive credibility finding. However, the fact that corroboration was not required did not mean that an Adjudicator was required to leave out of account the absence of documentary evidence, which could reasonably be expected: the Adjudicator was entitled to comment that it would not have been difficult to provide the relevant documents in this case. In particular, the Adjudicator was entitled to comment that it would not have been difficult for the Appellant to provide a death certificate concerning

his brother or some evidence to support his contention that he had received hospital treatment. These were issues of fact for the Adjudicator to assess. In the circumstances, the Tribunal declined to intervene and said that an appeal must be determined on the basis of the evidence produced but the weight to be attached to oral evidence may be affected by a failure to produce other evidence in support.

15. In Gedow, Abdulkadir and Mohammed v SSHD [2006] EWCA 1342 the Judge noted that the Somali appellant claimed that an uncle had funded his journey and the Judge referred to "the absence of any corroborative evidence by letter or any other means from his paternal uncle". The Court of Appeal said the Judge was merely drawing a conclusion from the absence of corroboration; and he was entitled to do so so long as he bore in mind the difficulties faced by asylum seekers in producing corroborative evidence.

16. The Judge made adverse findings about the lack of medical documents because the appellant indicated in his interview that he had documents in Turkey and although he later qualified this evidence the Judge found his evidence was inconsistent-something he was entitled to do. The Judge also noted that a search warrant was in existence along with his draft papers and the Judge found his failure to produce any of these was a factor he could take into account. Applying the above case law I am satisfied he did not err by this approach.

17. The first challenge to this decision has no merit and I find amounts to nothing more than a mere disagreement with the Judge's findings.

18. The second and third grounds are linked because being a draft evader is a factor the country guidance decision makes clear should be taken into account. Having made his adverse findings the Judge was then tasked with considering whether he would be at risk based on the approach of IK.

19. The decision of IK does not appear to have been referred to in the First-tier but nevertheless the Judge is expected to apply country guidance cases. A failure to mention a case does not mean there is an error in law as long as the Judge demonstrates engagement with the underlying principles and guidance of the case.

20. In paragraph [10] the Judge wrote-

> "For all of the reasons given above and for the reasons given by the respondent I do not find the appellant to be credible s to his claim of having fled Turkey in order to avoid the authorities on the basis of his support for the Kurdish cause or the basis he evaded military service. "

21. The Judge clearly had regard to two of the main limbs of the appellant's claim.

22. He had already rejected as lacking credibility his claim about being detained or alternatively found that even if he had been detained he had

been released without charge. The Tribunal in IK made clear that "arrests" as comprised in the GBTS require some court intervention, and must be distinguished from "detentions" by the security forces followed by release without charge.

23. The Tribunal made clear that the list of factors to be taken into account was not a checklist and should not be treated as such. Each case has to be considered on its own merits and although the Judge does not refer to the aforementioned case Mrs Mighal's submission that the Judge did not consider the risk to him is not borne out by the decision. Having those identifying tags does not mean this appellant must succeed. Each case must be assessed on its own merits and this is what the Judge did.

24. Whist the decision could have been more detailed and ideally referred to relevant case law I am not satisfied that the absence of a reference to the country guidance decision amounts, in this appeal, to an error in law.

25. I therefore find there is no error in law.

DECISION

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

Signed: Dated:

Deputy Upper Tribunal Judge Alis

FEE AWARD

I make no fee award as I have dismissed the appeal.

Signed: Dated:

Deputy Upper Tribunal Judge Alis