



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

Appeal Number: PA/08014/2018

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 9 October 2018**

**Decision & Reasons**

**Promulgated**

**On 29 October 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON**

**Between**

**MR A E  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Miss N Nnamani, Counsel, instructed by Howe & Co Solicitors

For the Respondent: Mr T Melvin, Home Office Presenting Officer

**DECISION AND REASONS**

**Background**

The appellant is a citizen of Turkey aged 36. The appellant appealed to the First-tier Tribunal against the decision of the respondent, dated 19 June 2018, to refuse the appellant's protection claim. In a decision promulgated on 6 August 2018, Judge of the First-tier Tribunal Sweet dismissed the appellant's appeal on all grounds.

The appellant appeals on the following grounds:

### Ground 1:

It was submitted that the judge made negative credibility findings in isolation from the medical expert evidence before the First-tier Tribunal which had confirmed, inter alia, that the appellant had scars consistent with the nature of assault and suffered from PTSD. It was argued that the Tribunal had erred in terms of the guidance given in **Mibanga [2005] EWCA Civ 367**.

### Ground 2:

The First-tier Tribunal failed to make findings in respect of the appellant's claimed account of his three detentions and appeared to reject the appellant's credibility due to his failure to claim asylum in the Netherlands, without making findings on the appellant's reasons for not doing so. It was further submitted that the non-attendance of the appellant's relatives was an insufficient reason for a negative credibility finding on the core of the appellant's claim.

### Ground 3:

It was submitted that although the First-tier Tribunal appeared to conclude that the appellant was a low level supporter of the HDP (as had been conceded by the respondent) although the findings were unclear, the First-tier Tribunal failed to adequately assess the background country information and the country guidance of **IK (Returnees - Records - IFA) Turkey CG [2004] UKIAT 00312**.

## **Discussion**

The respondent's bundle at D78 to D93 contained a psychiatric report from a consultant psychiatrist, Dr Hajioff. This included consideration of the appellant's scarring, which the expert confirmed was assessed and evaluated in line with the Istanbul Protocol.

The expert found one of the appellant's scars to be typical of a laceration from a sharp instrument and the smaller scars on his left hand the expert found to be consistent with injuries from uneven objects. The expert reminded himself that all the scars could come from other causes but noted that the appellant indicated that he could recall no significant injuries from work and/or sporting activities. The expert also found the age of the scars to be consistent with the appellant's evidence and although the expert could not rule out self-harm by proxy, in the expert's findings the appellant's injuries were not, in his experience, typical of self-harm. The consultant psychiatrist also stated, in conclusion, that the appellant was suffering from depression and chronic PTSD and that there was evidence of injury consistent with the appellant's account.

The First-tier Tribunal, at [11], listed the evidence including the medical report from Dr Hajioff. At [18] the Tribunal indicated that the appellant takes medication for his depression and the Tribunal referenced the report from the expert. Finally, at [40], the Tribunal took into account the appellant's medical condition and the fact that he had been diagnosed with depression and PTSD and was taking antidepressant medication.

However, Mr Melvin was unable to point to any other consideration of the medical report. There were no adequate findings, or indeed any findings, as to why, if that was the case, the First-tier Tribunal rejected that evidence, which was supportive of the appellant's account, including of being detained and mistreated. Although Mr Melvin did not concede the appeal he did not defend the decision with any real force, particularly, in his submissions, in light of the guidance in **Mibanga**.

That must be correct. There is an absence of adequate reasoning in the findings of the First-tier Tribunal both in relation to the medical report and in relation to the appellant's claimed detentions in Turkey. Although the judge listed the appellant's alleged detentions at [31], [32] and [33], the judge failed to engage with whether those alleged detentions were accepted and if they were not accepted why the appellant's evidence was specifically rejected including when considered in light of the background country information and the appellant's expert report, which gave some support to his claimed detention and ill-treatment.

Although there may be some force in Mr Melvin's argument that the judge was entitled to find it preposterous that the appellant would be relying on the fact that his own cousin had obtained asylum on the basis of his membership of the ECP yet his cousin was not present at the hearing to give evidence and that his brother-in-law, who had also been granted asylum on the basis of membership, had returned to Turkey on a visit and was therefore not present at the hearing, leading the judge to conclude that the appellant could do likewise, that does not obviate the need of the First-tier Tribunal to make findings on the evidence before it, central to the appellant's claim. That is so, even if the judge was correct in his finding in relation to the appellant's family (which is in some doubt given that there is no indication of any evidence before the judge about the return of the family to Turkey and in what circumstances that took place).

Although the First-tier Tribunal was entitled to take into account the appellant's failure to claim asylum in a safe country, prior to coming to the UK, again there were no adequate findings as to why, if that indeed were the case, the judge rejected the appellant's explanation for that failure including his evidence that this was related to his PTSD (which, as already noted, the consultant psychiatrist's report confirmed the appellant suffers from).

The judge went on to consider the appellant's activities in the UK but did not find that these went to the appellant's risk on return and also found that the appellant could relocate. The judge went on to find that the appellant was lacking in credibility and that even if the claim was accepted at its highest the appellant was a low level "member/supporter" and would not be at risk on return, applying the guidance in **IK [2004]**.

The findings are inadequately reasoned. Without further, the non-attendance of the appellant's relatives could not justify the negative credibility findings, even taken in conjunction with the appellant's failure to claim asylum in Holland. It is also unclear what evidence the judge accepted as the findings in

relation to whether or not the appellant was a supporter of HDP, as conceded by the respondent, are inadequate.

Although the judge went on to state that taking the appellant's account at its highest he was a low level member or supporter, the appellant's account at its highest was in fact that he has been detained and mistreated, those detentions taking place on three occasions in 2013, 2016 and 2017. It is the appellant's evidence that he was asked to become an informer. It is also not disputed that the appellant is of Kurdish ethnicity.

Although Miss Nnamani accepted that **IK (Returnees)** is a country guidance case of some vintage, in her submissions (including as set out in her skeleton argument before the First-tier Tribunal) the background country information did not support any departure from **IK (Turkey)**.

The Tribunal in **IK (Turkey)** adopted the findings of the court in **A (Turkey)** at paragraph 14 of **IK (Turkey)** and considered the potential risk factors, which include whether an appellant has ever been arrested or detained and if so in what circumstances. It may be relevant to note how long ago the arrests or detentions took place (and I note in this appellant's case the most recent detentions were in 2016 and 2017).

Relevant considerations also include whether circumstances of an appellant's past arrests and detentions indicate that the authorities did in fact view them as a suspected separatist and it is the appellant's account that he was accused of being a PKK terrorist. In addition, the degree of ill-treatment to which an appellant was subjected in the past must be considered together with whether an appellant has any family connections with a separatist organisation. Further factors are an appellant's Kurdish ethnicity and Alevi faith and whether an appellant has been asked to become an informer. Actual or perceived political activities abroad are also relevant.

Although these factors are not exhaustive and there are other factors in **IK (Turkey)** which are not relevant to this appellant it was incumbent on the judge, given that the appellant appears to have a number of relevant risk factors, to give adequate reasons for finding, as he did at [38], that the appellant was not at risk on return. A bare finding that he was 'applying the guidance in **IK**' was inadequate given the evidence before the First-tier Tribunal.

Mr Melvin submitted that if I was not with him, given what was said in **Mibanga**, the appeal would have to be remitted for fresh findings of fact.

### **Notice of Decision**

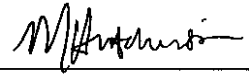
The decision of the First-tier Tribunal contains an error of law such that it is set aside. Given the failure of the First-tier Tribunal to engage with the expert evidence or make adequate findings in relation to the core of the appellant's claim, the appeal is remitted to the First-tier Tribunal to be heard de novo, other than before Judge Sweet.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 22 October 2018



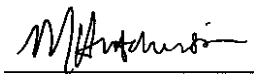
Deputy Upper Tribunal Judge Hutchinson

**TO THE RESPONDENT**  
**FEE AWARD**

No fee was paid or payable so no fee award is made.

Signed

Date: 22 October 2018



Deputy Upper Tribunal Judge Hutchinson