



**Upper Tribunal
(Immigration and Asylum Chamber)
Number: PA/07181/2018**

Appeal

THE IMMIGRATION ACTS

Heard at Field House

On 28 January 2019

**Decision & Reasons
Promulgated
On 7 February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

**ILHAN [S]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Nnamani (counsel) instructed by Howe & Co,
solicitors

For the Respondent: Mr L Tarlow, 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 Chana promulgated on 28 August 2018, which dismissed the Appellant's appeal on all grounds.

Background

3. The appellant was born on 23 August 1986 and is a citizen of Turkey. On 29 May 2018 the Secretary of State refused the Appellant's protection claim.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Chana ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 14 December 2018 Designated Judge Shaerf granted permission to appeal stating

1. The appellant is a Turkish Kurd born in 1986. He seeks permission to appeal the decision of Judge of the First-tier Tribunal Chana promulgated on 28 August 2018 dismissing his appeal against the refusal of international surrogacy protection claimed on the basis of his political opinion.

2. The Judge made her findings of fact as she recited the evidence and accordingly the grounds of appeal relying on M'bunga v SSHD [2005] EWCA Civ 367 are arguable.

3. It is also arguable that the Judge erred at paragraph 44 in relying on Fatih Andic v SSHD [2004] EWCA Civ 557 which was a judgement handed down before the determination in IK(returnees- records-IFA) Turkey CG [2004] UKIAT 00312.

4. All the grounds disclose arguable errors of law and permission to appeal is granted.

The Hearing

5. (a) For the appellant, Ms Nnamani moved the grounds of appeal. She told me that the appellant is a Turkish national of Kurdish ethnicity and claims he was involved in pro-Kurdish politics. She told with at [33] of the determination the Judge makes a material error of fact, because the Judge believed that the documents submitted by the appellant was a membership card for HDP when, in fact, it is a membership card from a Kurdish community centre. Ms Nnamani told me that the Judge confused herself because two separate documents were produced, one was a membership of the Kurdish community centre, the other is a letter from HDP confirming the appellants membership since 28 August 2014. She

told me that [33] of the decision demonstrates that the Judge did not understand the evidence.

(b) Ms Nnamani told me that the Judge's findings are set out between [31] and [52] of the decision. Between [33] and [36] the Judge finds that the appellant is neither a credible nor a reliable witness. The appellant relies on a medical report, which details scarring and provides a diagnosis of chronic PTSD. Ms Nnamani told me that at [42] the Judge dismisses the medical report by relying on her credibility findings from [33] onwards. She relied on M'bunga v SSHD [2005] EWCA Civ 367 and told me that the Judge's assessment of the medical evidence and the appellant's evidence is fundamentally flawed.

(c) Ms Nnamani told me that the Judge failed to follow country guidance & failed to engage with the objective background materials. She reminded me that the appellant's witness has been granted refugee status and told me that there is no analysis of the evidence provided by the appellant's witness. Ms Nnamani concedes that the Judge refers to IK (Returnees-Records-IFA) Turkey CG 2004 UKIAT 00312, but argued that the judge failed to follow the guidance given in that case.

(d) Ms Nnamani told me that the decision is tainted by material errors of law. She urged me to set the decision aside and remit the case to the First-tier Tribunal to be determined afresh.

6. (a) For the respondent, Mr Tarlow told me that the decision does not contain errors - material or otherwise. He told me that the grounds of appeal amount to nothing more than a disagreement with the Judge's well-reasoned findings. He told me that if there is any confusion at [33] of the decision it is not material to the conclusion that the Judge reached.

(b) Mr Tarlow took me to [36] and [39] of the decision, where, he told me, the Judge reaches conclusions well within the range of reasonable conclusions. He told me that the Judge gave inadequate consideration to the psychiatric report at [42] of the decision. Mr Tarlow told me that at [48] of the decision the Judge makes it clear that the appellant had not come to the adverse attention of the authorities in Turkey. He told me that the Judge's well-reasoned findings lead to [49] of the decision where the Judge finds that the appellant has fabricated his claim after applications under the Ankara agreement were unsuccessful. He told me that at [50] the Judge correctly follows the country guidance case of IK.

(c) Mr Tarlow urged me to dismiss the appeal and allow the decision to stand.

Analysis

7. The Judge's findings of fact start at [31] of the decision. Between [33] and [41] the Judge considers the appellant's evidence and repeatedly

finds that his credibility is damaged by various aspects of his evidence. Only after finding the appellant is not a credible witness does the judge turn to the psychiatric report found between documents 13 and 29 of the appellant's bundle.

8. The medical report that the appellant relies on finds that the scarring on the appellant's forehead & left eye, and the scarring to his hands and forearms are typical of the manner in which he described receiving the injuries. The author of the report finds that other scars on the appellant's body are consistent with the appellant's account. The author of the report finds that the appellant suffers from chronic PTSD.

9. The finding that injuries are typical of an account by reference to the Istanbul protocol is the second strongest of five potential findings. At [42] the Judge incorrectly records that the author of the report finds the injuries to be consistent with the appellant's account. Consistent is the second lowest of the five potential findings under the Istanbul protocol. The report quite clearly finds that some injuries are "consistent" but other injuries are "typical". The Judge does consider the expert's opinion that some injuries are "typical" of the appellant's account.

10. The Judge deals with the psychiatric report at [42] of the decision. The Judge finds that the report does not assist the appellant, but does not explain why. The Judge has quite clearly reached her conclusion on credibility before considering the medical evidence. At paragraph 24 of Mbanga v SSHD [2005] INLR 377 Wilson LJ said

What the fact finder does at his peril is to reach a conclusion by reference only to the applicant's evidence and then, if it be negative, to ask whether the conclusion should be shifted by the expert evidence.

11. One of the appellant's witnesses was [YM]. He is a Turkish national who has been granted refugee status in the UK because of his political opinion. At [29] the Judge records Mr [M]'s evidence, but nowhere in the decision is there any analysis of the evidence. It is implicit that the Judge rejects his evidence, but the Judge does not say why the appellant's witnesses evidence is rejected.

12. The approach taken to the medical evidence is not just superficial, it is a material error of law. The absence of analysis of the evidence of the appellant's two witnesses is also a material error of law.

13. 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.

14. The Judge's findings of fact are inadequately reasoned. That is a material error of law. I set the decision aside. I have found that the Judge's decision must be set aside because his fact-finding exercise was inadequate. I cannot substitute my own decision. Further fact-finding exercise is necessary.

Remittal to First-Tier Tribunal

15. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th 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.

16. In this case I have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand and a complete re hearing is necessary.

17. I remit the matter to the First-tier Tribunal sitting at Hatton Cross to be heard before any First-tier Judge other than Judge Chana.

Decision

18. The decision of the First-tier Tribunal is tainted by material errors of law.

19. I set aside the Judge's decision promulgated on 28 August 2018 and remit the case to the First-tier Tribunal to be re-heard.



Signed
January 2019

Date 30

Deputy Upper Tribunal Judge Doyle

