



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: AA/04286/2015

THE IMMIGRATION ACTS

Heard at Field House, London
On the 11th December 2015

Decision & Reasons Promulgated
On the 5th January 2016

Before:

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

Between:

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

MR G.T

(Anonymity Direction made)

Respondent /Claimant

Representation:

For the Appellant (The Secretary of State): Mr Norton (Home Office Presenting Officer)

For the Claimant/Respondent: Mrs Mughal (Legal Representative)

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of First-tier Tribunal Judge Mitchell promulgated on the 26th August 2015, in which allowed the Appellant's appeal on asylum grounds. For the purposes of clarity throughout this decision, the Secretary of State will be referred to as "the Secretary of State" and the Appellant at the First-tier Tribunal Mr G.T to as "the Claimant", given that the Appellant before the Upper Tribunal is not Mr G.T but the Secretary of State.

Background

2. The Claimant is a citizen of Turkey who was born on the 8th August 1994. It is the Claimant's case that he is entitled to asylum on the basis of his political opinion, as a result of his membership of the BDP Ganziatep youth branch, and that he is suspected of involvement with the separatist organisation the PKK. The Claimant's initial asylum application was refused by the Secretary of State in an asylum decision dated the 26th February 2015 for the reasons set out within the detailed reasons of refusal. That decision was appealed to the First-tier Tribunal, and that appeal was heard by First-tier Tribunal Judge Mitchell on the 7th August 2015.
3. Judge Mitchell allowed the Appellant's appeal on asylum grounds. That decision has been appealed to the Upper Tribunal, and permission to appeal has been granted by Judge of the First-tier Tribunal Brunnen on the 21st September 2015, when he found that the First-tier Tribunal Judge had arguably made an error of law in finding that the Appellant did not have a viable option of internal relocation and that the Judge had failed to have regard to IK (Returnees, Records, IFA) Turkey CG [2004] UKIAT 00312.
4. Within the Grounds of Appeal, it is argued that the Judge made a material misdirection in law and that he failed to engage with the Country Guidance case of IK (Returnees, Records, IFA) Turkey CG [2004] UKIAT 00312 and that the Judge had failed to take into account the differential nature of the risk of persecution away from the Kurdish/conflict areas in the South-East of Turkey and that as was noted by the Tribunal in the case of IK at paragraph 116, that "it is however implicit in our conclusions so far that the risk to a specific individual in most circumstances will be at its highest in his home area for a variety of reasons, and particularly if it is located in the areas of conflict in the South and East of Turkey. Conversely the differential nature of the risk outside that area may be sufficient to mean that the individual would not be at real risk of persecution by the state or its agencies elsewhere in Turkey, even if they were made aware of the first of the information maintained in his home area by telephone or fax enquiry from the airport, police station or elsewhere, or by a transfer of at least some of the information to a new home area on registration with the local Mukhtar there". It is argued that because the Appellant is at risk in his home area does not necessarily mean the Appellant will be at risk elsewhere in Turkey.
5. In his oral submissions before me, Mr Norton argued that the Judge had made a material error of law in his assessment of the viability of the Appellant internally relocating within Turkey in [23] of his decision, he argued that the Judge's reasoning regarding internal relocation was inadequately reasoned as to why internal relocation was not a viable option given the short nature of the detentions to which the Appellant had been subjected to, and that the evidence was that he would be of continuing interest in his home area, possibly due to a land dispute and that he may not be recorded on the system. He argued that the Judge had

not adequately explained and reasoned why internal relocation was not viable.

6. Miss Mughal in her submissions on behalf of the Claimant, argued that there was no real issue before the First-tier Tribunal regarding the Claimant's credibility and it was accepted by the First-tier Tribunal that the Claimant had been involved with the BDP and had been questioned regarding his association with the PKK and subject to mistreatment and that the Appellant would be travelling back on a travel document rather than on his own passport and that the Judge had properly assessed the risk to the Claimant in [23]. She argued that the Judge had the Country Guidance case of IK in mind throughout the determination.
7. Both legal representatives submitted that if there was a material error, the case could be remitted back to First-tier Tribunal Judge Mitchell for reconsideration as to whether or not internal relocation was a viable option.
8. I reserved my decision on the error of law.

My Findings on Error of Law and Materiality

9. Having carefully considered the entirety of the Judgement of First-tier Tribunal Judge Mitchell in this case, I do not accept that the Judge's findings regarding internal relocation were inadequately reasoned or insufficient, as submitted by the Secretary of State. The First-tier Tribunal Judge at [23] clearly had in mind the Country Guidance cases including IK (Returnees, Records, IFA) Turkey CG [2004] UKIAT 00312 referred to by the Respondent, which set out the risk factors in a non-exhaustive list. The First Tier Tribunal Judge had spelt out that the Judge found that the Claimant was suspected of involvement with a separatist organisation namely the PKK and that he had provided evidence which was broadly credible of having been arrested and detained in the past, which the Judge found related to his association with the PKK. The Judge further found that the authorities obviously viewed him as a suspected separatist and the Claimant had been ill-treated in the past. The Judge further found that the Claimant and his family did have connections with separatist organisations and that the period of detention was a relatively short time before his departure. The Judge further found that the Claimant is of Kurdish ethnicity and that the Claimant in the past had indicated that he had been asked to give information as regards to the PKK and who would support them in his local area. The Judge further found the Claimant was a draft evader and therefore would come to the adverse attention of the authorities all that much sooner and that he would be detained upon return and questioned. The Judge further found that the authorities had shown a continuing interest in him and his family and that he had been a political activist in a relatively minor way in the past. The Judge further found that the Claimant had left the country with an agent and a false passport and would be returned without his own passport, but on an emergency travel document which again he found will alert the authorities

to be interested in the Claimant's past. Although the Judge found that he may or may not be recorded on any of the Turkish computer systems as wanted and that he may not be detained for any significant period of time upon arrival, it was likely that upon his return to his home area the authorities would wish to know where he had been and further detain him again which would create a real risk to him, that he would be ill-treated as he had been in the past because of his imputed political opinion.

10. The Judge further within that same paragraph dealt with the question of internal relocation and found that "the Claimant does not have a viable option of internal relocation within Turkey. He would have to register with a Mukhtar in any area he went to and it is quite probable that the local authority would make enquiries of his home area to see whether or not he was a suspected separatist or not. This is because of the heightened interest there is in the PKK and Kurdish separatism"
11. I therefore find that the Judge clearly took account of the risk factors that he clearly and fully set out within the same paragraph, namely [23], which were present in the Claimant's case, in considering the issue of internal relocation, as these are clearly dealt with within the same paragraph and were relevant factors in the Judge's reasoning, as to not only his risk in his own area, but upon internal relocation.
12. Although it is argued that the Judge failed to engage in the case of IK (Returnees, Records, IFA) Turkey CG [2004] UKIAT 00312, the Judge clearly had that case in mind as he noted at [4] that it was agreed by both representatives that the case of IK was still extant and in my judgement having read the decision as a whole, the Judge clearly had the same in mind throughout his determination. He specifically refers to having considered the Country Guidance cases in considering the question of internal relocation within [23].
13. Although the Judge is criticised by the Appellant of having failed to take account of the differential nature of the risk outside of the Claimant's home area and that an individual may not be at risk of persecution by the state or agencies elsewhere in Turkey, even if they were made aware of the thrust of information maintained in the home area by telephone or fax enquiry from the airport, police station or elsewhere, or by a transfer of at least some of the information to a new home area on registration with the local Mukhtar there, as was stated at paragraph 116 of the Country Guidance case of IK. However, immediately after paragraph 116 quoted by the Secretary of State, the Upper Tribunal in the Country Guidance case of IK went on to state:

"117. Some information about an individual is not reasonably likely to be apparent to anyone other than a few individuals in his home area. For example, a specific gendarme might have it in for an individual, whom he considers to be a local ne'er-do-well but against whom there was no specific information. It is also implausible, in the current climate of zero tolerance for torture that an official would wish to record or transfer information that could potentially lead to his persecution for a criminal offence.

118. In general terms however we consider that one should proceed, when assessing the viability of internal relocation, on the basis that an individual's material history will in broad terms become known to the authorities at the airport and in his new area when he settles, either through registration with the local Mukhtar or if he comes to the attention for any reason of the police there. The issue is whether that record would be reasonably likely to lead to persecution outside his home area.

119. We have already identified some examples of the circumstances in which a person may have experienced serious ill treatment in the past in areas of Turkey where the PKK was or now is active, but would not necessarily be at a similar risk of such treatment elsewhere in Turkey where it is not, and where a differential view of his history could be taken. These include examples of general intimidation by the authorities of the Kurdish population to discourage support for the PKK, or to clear whole villages. The evidence is that anything between some hundreds of thousands to some millions (depending on whose figures one uses) may have been displaced within Turkey as a consequence of this. However, outside the areas of PKK activity there will not be the same perceived need to undertake such intimidation or clearances and the authorities within the receiving areas will be aware of the tactics that led to this mass migration and will be able to assess an individual's record in light of it. Suddenly, a person who was included on Mr Dill's list of local "ne'er-do-wells", against whom there was no evidence of PKK involvement, but who ran the risk of being detained for questioning whenever a PKK incident occurred in his vicinity, would not be at a similar risk in another area where the PKK was not active and where such incidents were much less likely to occur. These are just some examples of why differential risk can arise in different areas of Turkey".

14. The Upper Tribunal in the case of IK (Returnees-Records-IFA) Turkey CG, therefore made it clear that in general terms one should proceed when assessing the viability of internal relocation on the basis that an individual's material history will in broad terms become known to the authorities at the airport and in his new area when he settles, either through registration with the local Mukhtar or if he comes to the attention for any reason of the police there. The issue is whether that record would be reasonably likely to lead to persecution outside his home area.
15. I find that First-Tier Tribunal Judge Mitchell has fully and adequately dealt with this issue in [23] of his decision. The First-tier Tribunal Judge set out how the Claimant was viewed by the authorities as a suspected separatist and had been subjected to ill-treatment in the past and who had family connections with separatist organisations that he had been detained specifically relating to the association to the PKK. Given that the Judge had fully set out the risk factors faced by the Claimant, the fact that the Claimant would have to register with a Mukhtar in any area he went to and that it is quite probable that any local authority would make enquiries of his home area to see whether he was a separatist or not, the Judge's reasoning for finding that the Claimant would be at risk elsewhere in Turkey and that internal relocation was not a viable option for him have been adequately and sufficiently explained. This was a finding that was open to him on the evidence.

16. I consider that the reasoning of Judge Mitchell was adequate and sufficient in this case and that he has properly engaged with the Country Guidance case of IK, and fully and properly considered whether or not the Claimant would be reasonably likely to suffer from persecution outside his home area and whether internal relocation was a viable option for him. The decision of First-Tier Tribunal Judge Mitchell therefore does not disclose a material error of law and is maintained.

Notice of Decision

The decision of First-tier Tribunal Judge Mitchell not disclosing any material error of law is maintained and the decision stands;

Unless or 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

Dated 14th December 2015

Handwritten signature in black ink, appearing to read 'RFM McGinty'.

Deputy Judge of the Upper Tribunal McGinty