



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/05714/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 24<sup>th</sup> August 2017

Decision & Reasons Promulgated  
On 01st September 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR G. G.  
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr S Staunton (Home Office Presenting Officer)  
For the Respondent: Ms A Patyna (Counsel)

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of First-tier Tribunal Judge Chowdhury promulgated on 27<sup>th</sup> February 2017 in which the judge allowed the claimant's appeal against the Secretary of State's decision to refuse his protection claim. The judge allowed the appeal on asylum grounds, finding that the Appellant would be at a real risk of persecution because of his political opinion, were he to be returned to Turkey.

2. The Secretary of State now seeks to appeal against that decision and within the Grounds of Appeal it is argued by the Secretary of State that the judge erred firstly in failing to consider the possibility of the Appellant relocating internally within Turkey. It is argued there that within the case of **IK (Returnees - Records - IFA) Turkey country guidance [2004] UKIAT 00312** that the Immigration Appeals Tribunal took account of the fact that there may be people who would be identified as a PKK/Kurdish political supporter and would be of interest to the police in the south east but would be of little interest outside of the Kurdish areas.
3. It is also argued within the Grounds of Appeal that the judge relied upon the factors identified in the case of **IA** as a checklist to assess risk, rather than taking account of an overall assessment of the Appellant's risk. It is further argued that the judge failed to explain what would lead to the Appellant being at risk upon returning to the airport and the judge it was said had not properly explained her reason for finding the Appellant would be detained at the airport.
4. Permission to appeal had been granted by First-tier Tribunal Judge Brunnen on 16<sup>th</sup> June 2017. He found that the Grounds of Appeal were arguable, however in respect of the argument where it was said the judge had not properly explained her reason for finding the Appellant would be detained at the airport, Judge Brunnen found that the judge made no such finding and what was stated by the judge at paragraph 42 did not specifically relate to questioning at the airport.
5. I am grateful for the very helpful submissions made by both the legal representatives today which I have fully taken account of in reaching my decision. I am most grateful to the position taken by Mr Staunton on behalf of the Secretary of State who, having consulted with Ms Patyna on behalf of the claimant, concedes that he is in difficulty in respect of the first Ground of Appeal relating to internal relocation, on the basis that Mr Staunton tells me that the question of internal relocation was not in fact considered within the original refusal letter by the Secretary of State, nor was it argued before the First-tier tribunal Judge from what I am told by Ms Patyna who was present at the First-tier Tribunal and also after consideration of the judge's Record of Proceedings.
6. In such circumstances and Mr Staunton quite properly concedes it would be wholly wrong for the Upper Tribunal to consider that as a reason why the decision should be overturned, if the internal relocation argument was neither raised in the original refusal or before the First-tier Judge.
7. As Mr Staunton quite properly therefore concedes, the only issue really before the Upper Tribunal today is whether or not the First-tier Tribunal Judge simply relied upon the factors identified in the country guidance case of **IA (Turkey) [2003] UKAIT 0034** as confirmed in the case of **IK (Returnees - Records - IFA) Turkey country guidance [2004] UKAIT 00312** when considering the Appellant's risk.
8. The argument within the Grounds of Appeal that the judge had not properly explained the reason why the Appellant would be detained at the airport, as stated by Judge Brunnen is not what the judge found at paragraph 42. The judge makes no specific findings that the Appellant would be detained at the airport. He noted in

paragraph 41 that in **KI** the Upper Tribunal found that *“if a person was held for questioning either in the airport police station after arrival or subsequently elsewhere in Turkey and the situation justifies it, then some additional inquiry could be made with the Authorities in his local area about him where more extensive records may be kept, either manual or on computer”*. The judge went on in paragraph 42 to find that there was a reasonable degree of likelihood that such further inquiries would be made in the Appellant’s case. That was not a finding that the Appellant would actually be detained at the airport.

9. In respect of whether or not the judge simply relied upon a checklist, the judge within her decision stated at paragraph 29 that she must assess the risk to the Appellant on return guided by the approach in **IA (Turkey)**.
10. As Ms Patyna rightly states in her skeleton argument the Tribunal in **IA** did set out various potential risk factors which the judge should and did quite properly consider, but she has not simply considered it as a checklist in my judgment because as Ms Patyna rightly argues she has gone on not only to consider the potential risk factors, but then to state specifically at paragraph 42 that she has had regard to the existing overall political and human rights context in Turkey and noted that there had been an escalation of the action between pro-Kurdish parties and the Turkish Government and in the case of this particular Appellant she found that he now had a raised profile as a supporter of the pro-Kurdish parties and found that it would be likely that there would be a risk of treatment contrary to the Refugee Convention also contrary to Article 3 of the ECHR on the basis of his political opinion.
11. The judge has not simply used a checklist. It would be wrong of the judge not to consider the potential risk factors described in **IA (Turkey)**, but has clearly taken account not just of those factors but also the further factors which she has mentioned in paragraph 42 regarding the political and human rights contexts and the escalation of the actions between the pro-Kurdish parties and the Turkish Government when considering the evidence in the round.
12. In reaching her view she therefore has in my judgment properly considered the overall circumstances and the risk faced by the Appellant and in my judgment has given clear, adequate and sufficient reasons for her findings. She has made findings which were open to her on the basis of the evidence before her.
13. I therefore do not find that the decision of First-tier Tribunal Judge Chowdhury contains any material error of law and in those circumstances I dismiss the appeal and uphold the error of First-tier Tribunal Judge Chowdhury.

### **Notice of Decision**

The Respondent’s appeal is dismissed and the decision of First-tier Tribunal Judge Chowdhury is upheld.

The Judge of the First-tier Tribunal directed that the Appellant was granted anonymity. I consider that it is appropriate for such anonymity to be continued.

**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 31<sup>st</sup> August 2017

RFMcGinty

Deputy Upper Tribunal Judge McGinty