Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/11409/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 7 August 2015	**On 2 September 2015**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

CT

Respondent

Representation:
For the Appellant: Ms Agata Patyna, Counsel, instructed by Trott & Gentry Sols.
For the Respondent: Ms Emma Savage, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make the order because the appellant is a young asylum seeker who might be at risk just by reason of being identified.

2. The appellant (hereafter the Secretary of State) appeals against the decision of the First-tier Tribunal (Judge Head-Rapson) allowing the respondent's appeal against a decision taken on 5 December 2014 to

refuse the respondent's asylum claim and to remove the respondent from the UK.

Introduction

3. The respondent is a citizen of Turkey of mixed Kurdish and Turkish ethnicity born on 21 January 1997. He claims that he became active in his support for the BDP in 2011 and as a result was detained on two occasions. His first detention was on 14 February 2012 for two days. He was fingerprinted, photographed, ill-treated, questioned about PKK activity in his village and beaten with a baton. He was then released without charge. He was arrested again on 17 February 2012 when leaving the BDP party building. He was detained for two days and tortured. He was released and refrained from political activity until the summer of 2012. In April-May 2013 the respondent heard that his home had been raided and his mother taken to the gendarme station. His uncle found out that a friend who had been previously arrested had confessed that the respondent had links to the PKK. The respondent fled Turkey on 25 May 2013.

4. The Secretary of State accepted the respondent's identity and nationality but disputed ethnicity. His claim was otherwise rejected as not being credible.

The Appeal

5. The respondent appealed to the First-tier Tribunal and attended an oral hearing at Taylor House on 23 March 2015. He was represented by Counsel. The First-tier Tribunal accepted the evidence of the respondent that he was of mixed Kurdish and Turkish ethnicity and that there was a reasonable degree of likelihood that the appellant would be at risk were he to be returned to Turkey. He was also at real risk of being identified as a failed asylum seeker upon return and then sent to the airport police for further investigation. The two detentions were not official but unofficial records may have been kept which would come to light upon return.

The Appeal to the Upper Tribunal

6. The Secretary of State sought permission to appeal to the Upper Tribunal on the basis that the First-tier Tribunal had erred in law in finding that the respondent was at risk, he would be returned as a failed asylum seeker who does not speak Kurdish and local interest in him for his claimed political opinion would not be known to officials on his entry. The judge also failed to make any finding as to whether internal relocation would be available to the respondent. There was nothing to suggest that the respondent could not reside in another part of Turkey.

7. Permission to appeal was granted by First-tier Tribunal Judge Frankish on 16 June 2015. It was arguable that no reason was given for finding that the

two unofficial detentions would become officially recorded and relocation received a mention in theory but not in practice.

8. Thus, the appeal came before me

Discussion

9. Ms Savage submitted that the findings of fact at paragraph 64 of the decision are wholly inadequate because there is no explanation for finding that the respondent was subject to unofficial detention. The judge failed to deal with the reasons for refusal in any detail. Internal relocation is not mentioned except at paragraphs 24-26. There is no explanation of the core and material basis for allowing the appeal. The decision should be set aside and remitted for a fresh hearing.

10. Ms Patyana submitted that the appeal is based upon two narrow grounds and there is no overall challenge to the findings of fact that the respondent is at risk on return or his credibility. The judge did consider credibility in any event. The judge accepted the respondent's account that the detentions were recorded in the local area and that is consistent with country guidance. The records of local detentions could be obtained during the course of questioning upon return on an emergency travel document. There is no internal flight alternative because of the judge's findings of fact. The threshold for the asylum claim was passed. Even if there are insufficient findings about internal relocation the error is not material. There are positive credibility findings at paragraphs 54, 62, 63 and 64 of the decision.

11. Ms Savage replied that in order to find the respondent to be at risk the judge had to explain why the respondent was at risk and that is not clear from the decision. In particular, the judge did not explain how local records could be accessed by the authorities.

12. I find that the judge has not engaged in any detail with the credibility issues raised in the refusal letter. However, the overall findings on credibility are not challenged in the grounds by the Secretary of State, despite Ms Savage's submissions. The appeal comes down to two specific issues; absence of reasons for the unofficial local detentions constituting a future risk to the appellant and absence of any finding on internal relocation.

13. The wording of the decision at paragraphs 61-62 is unfortunate, with references to the respondent's claim rather than findings of fact made by the judge. However, I read those paragraphs in the context of paragraph 64 where the judge clearly accepted the evidence of the respondent. I therefore accept that the judge made findings of fact at paragraph 61 of the decision that the respondent was suspected as a PKK sympathiser and was detained on two occasions when he was ill-treated and threatened. During his detentions he was photographed and fingerprinted. His detentions were unofficial in that he did not appear before a public

prosecutor and was released without charge. Unofficial records of his detention were created in his local area and would come to the fore upon his return.

14. There are further findings of fact at paragraph 62 that the respondent travelled without a passport and would be returned by emergency travel documents and thus would be identified as a failed asylum seeker. He would be subject to in-depth questioning by the Turkish authorities and there is a reasonable degree of likelihood that he would be sent to the airport police station for further investigation. The judge referred to IK (Returnees – IFA) Turkey CG [2004] UKIAP 00312 but did not then explain in terms how the local unofficial records could "come to the fore". I have considered IK and note paragraphs 133-135 which state that extensive records can be kept about a person in his local area either manually or on a computer. At paragraph 135, transfer to the airport police station could generate an enquiry by the police as to what appears in the person's local records. I find that the country guidance case bridges the gap between the judge's findings and the conclusion that the respondent is at risk upon return. The respondent should not be deprived of the benefit of the positive credibility findings made by the judge simply because the judge failed to fully set out the relevant country guidance in the decision. No material error of law arises.

15. It is common ground that the judge self-directed on internal relocation at paragraphs 24-26 of the decision. The judge then followed the finding at paragraph 82 of IK that as a returned asylum seeker, the respondent could be subject to questioning and sent to the airport police station for further investigation. The judge states at paragraph 20 of the decision that the documents at pages 9-74 of the appellant's bundle were considered. The Turkey OGN from May 2013 (paragraph 3.9.12) states that there are ongoing concerns about the use of torture in Turkey, especially in places of detention, with insufficient steps being taken to carry out efficient investigations into allegations of torture and ill-treatment. As a matter of common sense, internal relocation would not assist the respondent if he was detained and ill-treated at the airport.

16. However, the Upper Tribunal in IK did not wholly exclude the possibility of escaping from local ill-treatment by state actors through internal relocation. Internal relocation may be a possibility but that will depend on an individual's material history. The respondent's history includes past detentions and suspicion of membership of the PKK. Most of the risk factors from A (Turkey) [2003] UKIAT 0034 apply to the respondent; including suspected involvement with a separatist organisation, previous detentions, the raid on the respondent's house is evidence that the authorities did view him as a suspected separatist, there was a significant degree of ill-treatment, the respondent left Turkey shortly after the raid, he is of Kurdish ethnicity and he does not have a Turkish passport.

17. At paragraph 120 of IK, the Upper Tribunal accepted the validity of the UNHCR guidance which stated that; "*in the context of internal flight it is*

essential to find out if Turkish asylum seekers if returned would be suspected of connection or sympathy with the PKK. In this case they should not be considered as having been able to avail themselves of an internal flight alternative … if persecution emanates from state authorities there is no internal flight alternative or relocation". That is consistent with the Secretary of State's OGN which states at paragraphs 2.31-2.32 that "very careful consideration" must be given to internal relocation in the context of ill-treatment by state agents.

18. Taking all of those factors into account, I find that the failure to make findings on internal relocation does not amount to a material error of law. Given the findings of fact and the case law set out above, the First-Tier Tribunal could only have found that internal relocation was not available to the respondent.

19. Thus, the First-tier Tribunal's decision to allow the respondent's appeal under the Refugee Convention did not involve the making of a material error of law and its decision stands.

Decision

20. I dismiss the appeal of the Secretary of State.

Signed  Date 30 August 2015

Judge Archer
Deputy Judge of the Upper Tribunal