



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

Appeal Number: PA/03969/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 22 January 2018**

**Decision Promulgated  
On 30 January 2018**

Before:

UPPER TRIBUNAL JUDGE GILL

Between

The Secretary of State for the Home Department

Appellant

And

N.S.  
(ANONYMITY ORDER MADE)

Respondent

**Anonymity**

**I make an order under r.14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the claimant. No report of these proceedings shall directly or indirectly identify him. This direction applies to both the applicant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings. The parties at liberty to apply to discharge this order, with reasons.**

**Representation:**

For the Appellant: Ms Z Ahmed, Senior Presenting Officer.

For the Respondent: Ms S Panagiotopoulou, of Counsel.

**DECISION AND DIRECTIONS**

1. The Secretary of State has been granted permission to appeal the decision of Judge of the First-tier Tribunal I Burnett who, following a hearing on 22 June 2017, allowed the appeal of N.S. (hereafter the "claimant") on protection grounds (asylum and Article 3 of the ECHR) against a decision of the Secretary of State of 15 April 2016 refusing his asylum claim of 26 October 2015. Reasons for the Secretary of State's decision were given in a letter dated 15 April 2016 (hereafter the "refusal letter").
2. The claimant is a Turkish national, born in Bingol on [ ] 1994. He is Kurdish and last lived in Karlioiva in Turkey. He claims to have arrived in the United Kingdom on 4 October 2015.

### Basis of asylum claim

3. The claimant said that he was a supporter of the People's Democratic Party ("HDP") in Turkey. He is not a member of the Kurdistan Workers Party ("PKK") but was a supporter. Members of his family and extended family were members of the HDP. His brother was arrested on 21 March 2014 and is awaiting trial. Other members of his family and extended family had court cases and had been imprisoned.
4. The claimant used to canvass and join demonstrations. He was arrested and detained in Turkey on three occasions as follows: On 30 March 2012, he was detained for 2 days. On 8 October 2014, he was detained for 3 days. On 16 August 2015, he was detained for 2 days. On all three occasions, he was released without conditions. On the first occasion, he was arrested and detained for protesting at his halls of residence. On the second occasion, he was arrested at a protest. On the third occasion, he was arrested and detained after soldiers had been killed on the Turkish border. The authorities came to his house and he was taken to the terror branch in Bingol. He was asked to give information about the PKK and HDP. He was not charged but released and told to report every week. He did not report but went to his uncle in Istanbul. He remained there and then left Turkey on 27<sup>th</sup> September 2015.

### The judge's decision

5. The relevant country guidance case was IK (Returnees – Records – IFA) Turkey CG [2004] UKIAT 00312, as the judge stated at para 23 of his decision.
6. The judge accepted the entirety of the claimant's claim. He accepted his evidence that he was wanted by the Turkish authorities and then stated, at para 55: "*I consider that in such circumstances there was a real risk to the claimant of ill-treatment and torture in Turkey.*" He therefore allowed the appeal on asylum grounds and under Article 3 of the ECHR.
7. The judge's assessment is set out at paras 44-55. In view of the submissions and my assessment, it is necessary to quote paras 44-54 of the judge's decision. They read:

#### "FINDINGS

44. I should state at the start that I have in mind the standard of proof in asylum claims. I have taken into account the judgment of the Court of Appeal in KV. I have applied the holistic approach or overall evaluative approach to

my assessment as set out in the well-known authority of Karanakaran v Secretary of State for the Home Department [2000] 3 All ER 449, CA.

45. I remind myself that given the challenge to the [claimant's] credibility, I need to make findings of fact and I do so on the lower standard and assess therefore whether the account the [claimant] relies on is reasonably likely to have occurred or (putting it another way), whether there is a real possibility that the events claimed happened. My findings are based on all the evidence, taken in the round and without compartmentalising one or the other.
46. The [claimant] has provided some documentation relating to his family. There has been no challenge to those documents by the respondent. The [claimant] was consistent as to his family background and he was not challenged about that history in cross examination. I am prepared to accept the [[claimant's] account regarding his family and their circumstances and political involvement. I will return to this later in my decision.
47. The question is whether the [claimant's] family background puts him at risk when taken together with the other factual aspects.
48. I turn to the [claimant's] personal circumstances and the events he described. The [claimant] has produced letters from HDP. There are two letters provided. I note the comments which Mr Eaton made in submissions. The letter in the respondent's bundle is very short and gives little information. The second letter which appears in the [claimant's] bundle of documents is equally short and simply states that the [claimant] has been active for the party since August 2014 until August 2015. However there is no suggestion that the documents are fraudulent. I give the letters some weight in my assessment.
49. The [claimant] has participated in political activities in the UK. The [claimant] has provided photographs of his participation. I accept he has been actively involved in politics in the UK:
50. The [claimant] describes three detentions in Turkey as a result of his involvement in politics in Turkey. The respondent raised a number of issues regarding the credibility of the account given by the [claimant]. The respondent questioned why the [claimant] was taken when his brother was a more prominent member. In response, the [claimant] stated that the respondent had misunderstood his evidence. I note in corrections made by his representatives the [claimant] explained that his brother was not at the [claimant's] home but at his own home, which was why the [claimant] was taken. I have carefully read over the interview again. I am prepared to give the benefit of doubt to the [claimant].
51. The respondent noted that the court papers showed the [claimant's] brother was born in 1988 and is therefore 27 (at the date of the interview). The [claimant] stated he was 20. The date of birth of his brother was a mistranslation and was corrected and so the approximate age given by the [claimant] was correct.
52. I have considered the issues raised by the respondent regarding the [claimant's] credibility. The background evidence shows that there is increasing intolerance towards the Kurdish cause. There has been an increase in arrests and some for no apparent reason: In one case it is reported that a family member was arrested going to visit someone in prison. It is perhaps not surprising that the [claimant] has been arrested and detained. His family seem to have a number of family members who have

court cases on going or who have been arrested and imprisoned. In a climate of increasing suspicion and a greater number of arrests, it is not at all implausible that the [claimant] has been arrested and detained.

53. I have taken into consideration section 8 (A ITCA 04) and the [claimant's] behaviour. Although I am required to take it into account as damaging the [claimant's] credibility I conclude that it does not detract from the [claimant's] core account.
54. I have looked at all the evidence in the round. I have applied the lower standard of proof. I accept the [claimant's] account that he is wanted by the authorities and that he has been arrested and detained on a number of occasions. I accept his involvement with HDP and his family profile.
55. I consider that in such circumstances there is a real risk to the [claimant] of ill treatment and torture in Turkey.
56. I allow his appeal."

### The grounds

8. The grounds may be summarised as follows:

- (i) Ground 1: Material misdirection in law: On the claimant's history, it was unlikely that there would be a record of his detentions on the GBTS and therefore there would be no real risk to the claimant at the airport, pursuant to para 133 of IK (Turkey). Ground 1 relies upon para 133 of IK (Turkey).
- (ii) Ground 2: Lack of adequate reasons: Ground 2 is that, absent a risk at the airport, there was no adequate consideration of the possibility of relocation within Turkey away from the South-East were the interest in pro-Kurdish activities is reduced. In this regard, the grounds rely upon paras 116-120 of IK (Turkey).
- (iii) Ground 3: Lack of adequate reasons: Ground 3 is that, in stating at para 52 of his decision that there was "*an increasing intolerance towards the Kurdish cause*", the judge had failed to adequately explain what this increase relates to nor explain the period from which he considered there was an increase. The grounds contend that the increase was not an increase from 2002 when IK (Turkey) was promulgated but an increase in recent years "*following a preceding steep decline in interest after a long period of inactivity by the PKK.*"

### Submissions

9. As will be seen from my assessment below, I have concluded that ground 3 is determinative. I will nevertheless summarise the parties' submissions on grounds 1 and 2 in addition to ground 3.
10. At the commencement of the hearing before me, I raised the question whether ground 3 was a challenge to the judge's assessment of credibility. Ms Ahmed submitted that it was because (in her submission) the judge was considering credibility at para 52. Ms Panagiotopoulou submitted that it was not a challenge to credibility because (in her submission) the judge assessed credibility at paras 46-51 and he began to assess future risk at para 52 onwards. The parties developed their submissions on this point subsequently, as summarised below.

11. If the judge was assessing credibility at para 52, I made the preliminary observation that it appeared to be unclear whether, in referring to "*increasing intolerance towards the Kurdish cause*" the judge was referring to the situation in Turkey since the failed coup which took place on 15 July 2016 and, if so, whether he had taken into account an irrelevant consideration given that the claimant's arrests and detentions pre-dated the coup attempt. I record that Ms Panagiotopoulou did not take issue with my suggestion that it is known that there have been increased difficulties in Turkey since the failed coup, nor did she ask me for sources.
12. In relation to ground 3, Ms Ahmed submitted that the judge failed to consider the credibility points raised in the refusal letter of which (she submitted) there were a number. Paras 33-37 of the judge's decision show that the Presenting Officer made a number of points in relation to credibility. Ms Ahmed accepted that the grounds had not challenged the judge's assessment at paras 46-50.
13. In relation to ground 1, Ms Ahmed submitted that it was not reasonably likely that the claimant's arrests and detentions would be on the GBTS given that he had been released without conditions. At para 54, the judge had simply concluded that the claimant was wanted without assessing the evidence or facts in line with the guidance in IK (Turkey).
14. In relation to ground 2, Ms Ahmed submitted that the judge had not considered whether the claimant could relocate internally and failed to consider paras 116-120 of IK (Turkey).
15. In response, Ms Panagiotopoulou submitted that ground 3 did not relate to credibility and it made no sense. When the two sentences are read together, she submitted that it was simply "*a rambling ground*". Importantly, she submitted that the second sentence, referring to "*preceding steep decline*" in the phrase "*following a preceding steep decline in interest after a long period of inactivity by the PKK*", was not sourced. It did not make sense because there were clashes between the PKK and the authorities even before the ceasefire in July 2015.
16. Ms Panagiotopoulou submitted that the judge's assessment of credibility began at para 45. The claimant gave evidence of the political involvement of members of his family and that his brothers and cousins had been detained. This evidence was relied upon in the skeleton argument before the judge. There were documents relating to their arrests at Annex E of the Secretary of State's bundle. Page E10 relates to the claimant's brother, page E13 his uncle, page E16 his cousin and page E23 another cousin.
17. The skeleton argument and the documents were referred to at para 31 of the judge's decision. Para 2 of the skeleton argument sets out the numerous relatives who had been imprisoned or killed because of their involvement with the PKK. At para 46 of his decision, the judge said that he accepted the account concerning the family, their circumstances and political involvement.
18. Ms Panagiotopoulou submitted that the judge commenced considering the credibility of the claimant's evidence about his own experiences in Turkey at para 48 onwards. He stated that it was not suggested that the HDP letters were fraudulent. He therefore gave some weight to the HDP letters.

19. At para 49, the judge considered the claimant's political activities in the United Kingdom and the photographs evidencing his participation. At paras 50 and 51, the judge considered issues raised by the Secretary of State concerning the applicant's three detentions. The judge accepted the claimant's explanations. The second issue, considered at para 52, was about an inconsistency concerning the date of birth of the claimant's brother as stated in the translated document at E10. The Turkish version, on page E11, shows that the inconsistency in the brother's date of birth was due to a translation error. This point had not been taken by the Presenting Officer at the hearing before the judge.
20. Ms Panagiotopoulou reminded me that the findings at paras 46-51 have not been challenged by the Secretary of State.
21. Ms Panagiotopoulou submitted that the core of the claimant's account had been accepted by the judge in a well-reasoned decision. She submitted that para 52 did not relate solely to credibility. At para 52, the judge had begun to assess the future risk. The reason why he referred to the increasing intolerance was because he was considering the future risk at para 52. Ms Panagiotopoulou therefore submitted that ground 3 does not challenge credibility and, in any event, it does not relate to the core of the claimant's case.
22. Ms Panagiotopoulou submitted that there was no merit in ground 1. It is clear from the guidance in IK (Turkey) that the starting point is to consider the risk in the home area. On the findings of the judge, the claimant is at risk in his home area. Internal relocation only arises if the individual has not been made the subject of specific interest. Pursuant to para 119 of IK (Turkey), a person can relocate if he/she is of general interest. However, if there has been specific attention given to a person, as in the case of the claimant, then internal relocation is not possible, pursuant to para 118 of IK (Turkey). In such cases, the individual's history will become known at the airport or on relocation either upon registration with a 'Mukhtar' or if one comes to the attention of the police for whatever reason.
23. Ms Panagiotopoulou submitted that the grounds were therefore misdirected on the guidance in IK (Turkey). Although the judge had not referred to IK (Turkey) in his concluding paragraph, he referred to it earlier in his decision, at para 23. He was aware of IK (Turkey). Furthermore, the skeleton argument referred to IK (Turkey).
24. Ms Panagiotopoulou drew my attention to the fact that the judge said more than once, at paras 45 and 54, that his findings had been made on the evidence as a whole.
25. In response, Ms Ahmed submitted that ground 3 does relate to the judge's credibility assessment and that the judge had been considering credibility at para 52, as indicated by the phrases "*perhaps not at all surprising*" and "*not at all implausible*" at para 52. She submitted that the judge had failed to consider the Presenting Officer's submissions summarised at paras 33-37 of the decision. Whilst she acknowledged that the grounds had not challenged the assessment at paras 46-51 of the judge's decision, this was relied upon on the claimant's behalf in order to resist ground 3.
26. I reserved my decision.

## Assessment

27. The first question is whether ground 3 relates to credibility. As can be seen, ground 3 concerns the sentence in para 52 of the judge's decision which reads:
- “The background evidence shows that there is increasing intolerance towards the Kurdish cause”.
28. The question whether ground 3 relates to credibility depends upon whether the judge was considering credibility when he said: *“The background evidence shows that there is increasing intolerance towards the Kurdish cause”*.
29. I am in no doubt that the answer is that he was. In my judgement, he considered credibility not only at paras 45-51 but also at paras 52-53. The first sentence of para 54 also concerned his assessment of credibility. My reasons are as follows:
- (i) The sentence: *“The background evidence shows that there is increasing intolerance towards the Kurdish cause”* was followed by the following in para 52:
- “... There has been an increase in arrests and some for no apparent reason: In one case it is reported that a family member was arrested going to visit someone in prison. It is perhaps not surprising that the [claimant] has been arrested and detained. His family seem to have a number of family members who have court cases on going or who have been arrested and imprisoned. In a climate of increasing suspicion and a greater number of arrests, it is not at all implausible that the [claimant] has been arrested and detained.
- (my emphasis)
- (ii) This was then followed by para 53, where the judge considered s.8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (the “2004 Act”). He said that s.8 did not detract from the claimant's core account. This was then followed by para 54, where he said that he had looked at all of the evidence in the round and concluded:
- “I accept the [claimant's] account that he is wanted by the authorities and that he has been arrested and detained on a number of occasions. I accept his involvement with HDP and his family profile.”
- (iii) When paras 46-55 of the judge's decision are read as a whole, it is clear that he considered credibility at paras 46-54. The only paragraph that concerns the future risk is para 55.
30. I have therefore concluded that the entirety of para 52, including the sentence referring to increasing intolerance towards the Kurdish cause, was part of the judge's assessment of credibility.
31. The next question is whether the judge erred when he said *“The background evidence shows that there is increasing intolerance towards the Kurdish cause”* by failing to explain what background material he was relying upon.
32. As stated at my para 11 above, I made the preliminary observation that, if the judge was referring to the situation in Turkey following the failed coup on 15 July 2016, then the question arises as to whether he took into account irrelevant evidence given that

this would mean that the background evidence he was relying upon (which he did not describe) in assessing the credibility of the claimant's evidence that he was arrested and detained three times was post-15 July 2016 whereas the claimant's claimed detentions took place in February 2012, October 2014 and August 2015. Ms Panagiotopoulou did not object on the basis that I had not provided any sources in referring to the failed coup or the situation in Turkey since then. In any event, I am able to take judicial notice of the fact that there was a failed coup in Turkey on 15 July 2016 and that there have been news reports since then that would be consistent with the judge's view (para 52) that:

"There has been an increase in arrests and some for no apparent reason: In one case it is reported that a family member was arrested going to visit someone in prison."

33. I am satisfied that, by failing to be specific in explaining what background evidence he was relying upon, the judge erred by failing to give adequate reasons for saying (para 52) that: "*It is perhaps not surprising that the [claimant] has been arrested and detained.*"
34. Since this goes directly to the claimant's core account about his claimed arrests and detentions, it is necessary to consider the remainder of the judge's credibility assessment at paras 46-54 in order to decide whether the error I have identified is material. It is for this reason, and this reason only, that it is necessary to consider the remainder of the judge's credibility assessment even though the Secretary of State has not challenged that remaining assessment.
35. I have concluded that the judge erred in his assessment at paras 46-54 of the decision, as follows:
  - (i) At para 46, the judge referred to the fact that the claimant had produced documentation relating to his family. He said that there was no challenge by the Secretary of State to the documents. At para 47, he said that the question was whether the claimant's family background placed him at risk when taken together with the other factual aspects. At para 52, he said: "*His family seem to have a number of family members who have court cases on going or who have been arrested and imprisoned.*" At para 54, he said: "*I have looked at all the evidence in the round. ... I accept the [claimant's] account that he is wanted by the authorities and that he has been arrested and detained on a number of occasions.*" It is therefore clear that the judge accepted the claimant's family background and, importantly, took this into account in assessing the credibility of the claimant's claim that he was arrested and detained as claimed. In doing so, the judge failed to consider the Secretary of State's case at para 32 of the refusal letter where she said that, given the claimant's family background, it was not credible that he was released without charge and without conditions on three occasions. This goes directly to the credibility of the claimant's claimed arrests and detentions. Para 33 of the judge's decision's decision shows that the Presenting Officer relied upon the refusal letter.
  - (ii) At para 48, the judge said that the Secretary of State had not suggested that the two letters from the HDP were fraudulent. However, the fact is that para 26 of the refusal letter took issue with these letters. The decision-maker raised the fact that the letter dated 15 October 2015 was dated 10 days before the



claimant's asylum claim and that the claimant had not provided any evidence as to where the letters had come from. In essence, therefore, the decision-maker was saying that the contents of the documents were not reliable. As I have said, para 33 of the judge's decision shows that the Presenting Officer relied upon the refusal letter. Paras 36 and 37 of the judge's decision show that the Presenting Officer took specific issues about the HDP letters and he also drew attention to the fact that the claimant had not mentioned his HDP involvement at his screening interview, thus raising as an issue that the contents of the two HDP letters were not reliable.

The Presenting Officer's submissions were in line with para 23 of the refusal letter which took issue with the claimant's evidence of his involvement with the HDP. Para 23 of the refusal letter took issue with the fact that the claimant had failed to mention his HDP involvement at his screening interview when he said that he was accused of being involved with the PKK whereas the core of his claim was that he was arrested and detained due to his involvement in demonstrations with the HDP.

The judge was therefore incorrect to take into account in the claimant's favour the fact that the Secretary of State had not contended that the two HDL letters were fraudulent when the fact was that the reliability of the letters was in issue. He therefore erred in his approach.

36. The above are errors in approach which led the judge erroneously to take into account in the claimant's favour his family background and the HDP letters on the basis that this evidence was accepted by the Secretary of State, in reaching his overall positive credibility assessment and the credibility of his evidence that he was arrested and detained three times.
37. In addition, as I have said above, the judge said at para 46 that the Secretary of State had not challenged the documentation provided by the claimant. He said that the claimant was not challenged about his family's history in cross-examination. Para 36 of the judge's decision shows that the Presenting Officer drew attention to the fact that the claimant had not mentioned his family's links to the PKK at his screening interview. Whilst it is correct that asylum seekers cannot be expected to mention every fact upon which they rely at a screening interview, the claimant's case included his claim that several members of his immediate and extended family "*have court cases on going or who have been arrested and imprisoned*" (para 52 of the judge's decision). Ms Panagiotopoulou took me through translations of several court documents. With this claimed family background, the Presenting Officer's submission, that the claimant had not mentioned his family's links with the PKK at his screening interview, should have been considered by the judge. The submission raised the issue that the Secretary of State did not accept the claimed family background.

Whilst the judge dealt with two other matters arising from the court documents, at paras 50 and 51 of his decision, he did not consider the fact that the claimant had failed to mention his family's PKK links at his screening interview, a point which is capable of going materially against the claimant's credibility given the number of relatives he claimed to have had court documents issued against them on account of their PKK links.

38. The errors described at my paras 35 and 37 are important. They concerned important matters. It was not enough for the judge to say, at para 45 of his decision, that: *“My findings are based on all the evidence, taken in the round and without compartmentalising one or the other”* and at para 54 that: *I have looked at all the evidence in the round.”*
39. The result of these errors is that the error raised in ground 3, as explained at my paras 28-33, is material to the judge's overall positive credibility assessment, his finding that the claimant is wanted by the Turkish authorities and that he had been arrested and detained as claimed.
40. Ground 3 is therefore established. This means that the judge's credibility assessment cannot stand.
41. It is therefore unnecessary for me to deal with grounds 1 and 2.
42. For all of the above reasons, I set aside the decision of the judge to allow the appeal on asylum grounds and with respect to Article 3. I set aside his decision in its entirety. For the avoidance of doubt, this means that I set aside the entirety of the judge's credibility assessment and findings of fact.
43. In the majority of cases, the Upper Tribunal when setting aside the decision will re-make the relevant decision itself. However, para 7.2 of the Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal (the “Practice Statements”) recognises that it may not be possible for the Upper Tribunal to proceed to re-make the decision when it 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.”
44. In my judgment this case falls within para 7.2 (b). In addition, given that the claimant won his appeal before the First-tier Tribunal and having regard to the Court of Appeal’s judgment in JD (Congo) & Others [2012] EWCA Civ 327, I am of the view that a remittal to the First-tier Tribunal is the right course of action.

### **Notice of Decision**

The decision of the First-tier Tribunal involved the making of errors on points of law such that the decision is set aside in its entirety. This case is remitted to the First-tier Tribunal for a fresh hearing on all issues by a judge other than Judge of the First-tier Tribunal I Burnett.



Upper Tribunal Judge Gill

Date: 26 January 2018