



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

Appeal Number: PA/10470/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 5 November 2018**

**Decision & Reasons  
Promulgated  
On 12 November 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY**

**Between**

**MUHAMMED [O]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms U Dirie, of Counsel instructed by Messrs Kilic & Kilic Solicitors

For the Respondent: Ms Julie Isherwood, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals with permission against a decision of Judge of the First-tier Tribunal Lucas who, in a determination promulgated on 26 April 2018, dismissed the appeal of the appellant against a decision of the Secretary of State to refuse asylum made on 9 August 2017.
2. The appellant is a citizen of Turkey born on 15 September 1986. He claimed that he was Kurdish and a supporter of the PKK and that he had been arrested by gendarmes in April 2006 and detained for two days before being released. He had again been taken by gendarmes in

December 2012 and tortured, and in 2013 he was told that the gendarmes were looking for him. He then took steps to leave Turkey.

3. When he made his application a report from the Medical Foundation was submitted.
4. The judge having heard the appellant's appeal set out his findings in paragraphs 33 onwards of the determination. He went through the various points made by the appellant and did not find them credible. He then, at paragraph 42, said that he had noted the medical evidence which noted injuries on the appellant's body and a diagnosis of PTSD and said:-

"However, given that his account is regarded as not plausible, it is not accepted that his medical or psychological condition is a consequence of his alleged ill-treatment in Turkey".
5. The grounds of appeal stated, inter alia, that the judge had not properly assessed the evidence and the relevant background documentation which was before him and further had not considered the evidence of the appellant in accordance with his vulnerability.
6. Judge of the First-tier Tribunal Saffer dismissed the grounds of appeal, but further grounds emphasised the terms of the medical report and referred to the judgment of the Court of Appeal in **Mibanga [2005] EWCA Civ 367**. On those grounds Upper Tribunal Judge Grubb granted permission.
7. At the hearing of the appeal before me Ms Isherwood correctly accepted that there was a material error of law in the determination in that the judge having found that the appellant was implausible had then gone on to dismiss the appeal.
8. The reality is that the decision of the judge was not made holistically taking into account the evidence and that the judge's conclusions regarding the medical evidence were made after he had found the appellant was not credible. Given particularly the lack of reasoning by the judge for dismissing the medical evidence, and indeed not considering it in any detail, I consider that there is a material error of law in the determination and it is appropriate that this appeal is remitted to the First-tier Tribunal for a hearing afresh on all issues.

### **Notice of Decision**

- (1) The decision of the judge in the First-tier Tribunal is set aside.
- (2) The appeal will be remitted to the First-tier Tribunal for a hearing on all issues.

No anonymity direction is made.



Signed:  
Deputy Upper Tribunal Judge McGeachy

Date: 7 October 2018