Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/01569/2019 (V)**

THE IMMIGRATION ACTS

Heard remotely at Field House	**Decision & Reasons Promulgated**
On 25 June 2021	**On 13 July 2021**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

HAKAN KAVAKLI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Caskie, Rea Law Solicitors
For the Respondent: Mr C Avery, Home Office Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in the bundles on the court file, the contents of which I have recorded. The order made is described at the end of these reasons.

DECISION AND REASONS

1. The Appellant is a citizen of Turkey born on 15 December 1975. He appeals against the decision of First-tier Tribunal Judge O'Hagan, promulgated on 20 November

2019, dismissing his appeal against the refusal of his protection claim on asylum, humanitarian protection and human rights grounds.

2. Permission to appeal was granted by Mr C M G Ockelton, Vice President of the Upper Tribunal on 22 March 2021 for the following reasons: "Permission is granted in light of the Interlocutor and Joint Minute in this case. The parties are reminded that the Upper Tribunal's task is that set out at s.12 of the 2007 Act."

3. The appellant's immigration history is set out at [1] to [14] of the decision of the First-tier Tribunal. In summary, the appellant entered the UK in 2001 and claimed asylum. His application was refused and his appeal dismissed by Judge Kekic on 22 April 2002. The appellant's subsequent applications under the Ankara Agreement and Immigration (EEA) Regulations 2006 were refused.

4. On 12 February 2007, the appellant was convicted of having a false instrument, a Greek passport, and obtaining services by deception. He was sentenced to 18 months' imprisonment and recommended for deportation. The appellant absconded. He made a further claim for asylum in May 2013 which was refused and a decision was made to deport him on 12 December 2013. The appellant's appeal against this decision was dismissed by the First-tier Tribunal on 28 May 2014 and the Upper Tribunal on 8 August 2014.

5. The appellant has two children, born in November 2009 and October 2014, with his British citizen wife, Linda Cheung. The appellant made further submissions on 15 June 2015 which were refused and the deportation order was signed on 23 June 2015.

6. The appellant returned to Turkey on 26 June 2015 and his wife and children joined him on 3 August 2015. They lived together with the appellant's mother in Siverek until 9 November 2015 when his wife and children returned to the UK. The appellant re-entered the UK illegally on 16 December 2015. He made an application for leave to remain on Article 8 grounds on 27 January 2017 and made further submissions in February 2017 and July 2018. On 4 February 2019, the respondent refused the appellant's protection and human rights claims. The appellant appealed.

7. First-tier Tribunal Judge O'Hagan [the judge] heard the appellant's appeal 17 October 2019. The appellant and his wife gave evidence. The judge applied Devaseelan and considered the previous decisions. In April 2002, Judge Kekic rejected the appellant's claim to have been conscripted into the army and ill-treated. She found that the documents submitted by the appellant were not authentic and his credibility was severely damaged. In their decision dated 28 May 2014, the First-tier Tribunal panel concluded the appellant had fabricated his claim and he was not on a wanted list.

8. The judge set out the 'new' evidence before her at [29]. The appellant's daughter was born in 2014, a deportation order had been signed, the appellant and his family had

returned to Turkey for three months, and the appellant had re-entered the UK in breach of a deportation order.

9. The appellant and his wife claimed that his wife experienced problems at the hands of the Turkish authorities. The appellant claimed that, shortly after his family returned to the UK, he was arrested, detained and beaten in Turkey. The police realised there was an arrest warrant against him and his brother paid a bribe for his release.

10. The appellant produced five court documents which were sent to the respondent on 27 January 2017 with a report from a Turkish lawyer, Levent Kanat dated 25 January 2015 and an expert report by Sheri Laizer dated 27 January 2015. The appellant also submitted further court documents, a statement of truth from Mr Kanat and a second report from Ms Laizer dated 9 September 2019.

11. The judge did not find the appellant to be a credible witness for the following reasons:

    (i) He made arrangements to award Mr Polat, a lawyer in Turkey, power of attorney [PoA] to obtain court documents. The PoA was registered on 15 January 2014, four months before his second appeal hearing before the First-tier Tribunal panel, in May 2014. The appellant made no mention of the PoA in that appeal [31];
    (ii) Mr Polat obtained the court documents and passed them to the appellant before January 2015 when he obtained reports from Ms Laizer (dated 27 January 2015) and Mr Kanat (dated 27 January 2015). The appellant made no mention of the court documents or the expert reports in correspondence to the respondent on 15 June 2015 [33];
    (iii) The appellant returned to Turkey on 26 June 2015, five months after the reports from Ms Laizer and Mr Kanat confirmed the court documents were genuine. He lived in his home town of Siverek with his mother [35].
    (iv) His family joined him in Turkey in August 2015 and they lived there for three months [37].

12. The judge found that the appellant's return to Turkey with his family undermined his belief that the documents were genuine and that he was at risk on return. In considering the weight to be attached to the court documents, the judge noted that neither of these decisions were made available to the expert witnesses Sheri Laizer or Levent Kanat [38]. She concluded that Mr Kanat's opinion was based on an assessment of the structure and language of the documents. There was no evidence before her that he had made enquiries with the court or the authorities. She acknowledged Mr Kanat's expertise as a lawyer, but questioned his expertise authenticating documents. The judge found that Mr Kanat's opinion was vague and she attached little weight to it [40 to 43].

13. The judge attached little weight to the opinion of Ms Laizer in so far as it predicated Mr Kanat's opinion [45]. She applied Tanveer Ahmed and found that the documents relied on by the appellant were not genuine. She found the appellant's claim to be at risk by reason of his actual or imputed political opinion had been rejected by two previous Tribunals and the 'new' evidence further undermined the appellant's credibility. She considered Article 8 and dismissed the appellant's appeal.

Submissions

14. Mr Caskie applied under Rule 15(2) to admit further evidence and relied on his petition to the Court of Session at [16] to [18] and [23] to [25]. He submitted that Devaseelan did not apply with the same force in relation to country material. There was evidence in Ms Laizer's reports that the appellant would be at risk on return to Turkey because of his ethnicity and his home town was the centre point of the separatist movement in south east Turkey.

15. Mr Caskie submitted it was apparent from Ms Laizer's reports that the situation had changed since the previous appeal. The appellant could obtain evidence about his criminal past and any ongoing proceedings with the assistance of a registered lawyer. Mr Caskie submitted the lawyer could access material which Ms Laizer could not, but he was unable to point to evidence which showed that Mr Kanat had done so. He submitted the judge had not attached any weight to Ms Laizer's reports and that was an error of law. Ms Laizer had instructed Mr Kanat and therefore the judge had erred in law in her approach to Mr Kanat's evidence. As a respected lawyer, Mr Kanat's opinion should have been given appropriate weight. The evidence in Ms Laizer's reports and the court documents was sufficient to put the appellant at risk on return. The judge erred in law in attaching no weight to the evidence of Ms Laizer and Mr Kanat and she failed to explain why she did so.

16. Mr Caskie submitted the judge gave reasons for attaching no weight to some of the documents, but not all of them. It was no open to her to reject the entirety of the appellant's claim on the basis she did not accept some of the documents were genuine. The judge failed to take into account the 'waxing and waning' of persecution in Turkey. She failed to make an assessment of the evidence of the appellant's wife. There was no suggestion the appellant's wife was trying to mislead the Tribunal.

17. Mr Caskie adopted the grounds of appeal to the First-tier Tribunal and Upper Tribunal. He submitted the judge wrongly criticised the appellant for failing to produce evidence at an earlier opportunity. This undermined the fresh claim procedure under paragraph 353 of the Immigration Rules. The appellant was entitled to rely on further evidence that had become available and the judge erred in law in attaching less weight to a report because it was not relied on at a previous hearing. Mr Caskie submitted that [31] was unclear.

18. In relation to Article 8, Mr Caskie submitted the judge had failed to properly approach the balancing exercise. The judge reduced the weight attached to the appellant's family life, but maintained the weight attached to the public interest despite the passage of time.

19. Mr Avery submitted the grounds and submissions amounted to disagreements with the judge's findings and did not disclose an error of law. The judge took a proper approach to the expert evidence and was entitled to take into account the appellant's failure to rely on that expert evidence at the earliest opportunity. The appellant made no mention at the previous hearing that he had instructed a lawyer to authenticate court documents.

20. The judge considered the expert evidence and gave adequate reasons for the weight she attached to it. The judge's assessment at [48] was entirely accurate. There was no free standing risk on the basis of ethnicity and degree of activism. This was not evidenced in Ms Laizer's report. She was of the view the appellant would be at risk as an absconder.

21. Mr Avery submitted there was no error of law in the judge's assessment of Article 8. The weight to be attached to the public interest was not lessened by anything that happened after the deportation order was made. The appellant had returned to the UK in breach of a deportation order. The appellant's family had lived with him in Turkey and had travelled there on a number of occasions. The evidence of the appellant's wife did not go to the core of the appellant's claim. The judge gave adequate reasons for rejecting the appellant's claim that he could not register his son at school. The judge considered the evidence in the round.

22. It was not accepted the appellant had a political profile and therefore he would be at risk of a fine. It was not accepted the appellant absconded from military service. The further evidence did not assist the appellant in establishing an error of law.

23. In response, Mr Caskie accepted the expert opinion of Mr Kanat did not show that he had accessed a database. He submitted, however, that there was a real difficulty in the way the judge had approached the evidence. She was wrong to conclude that the appellant's claim had been dismissed in the past and there was insufficient evidence to change that situation. The judge approached the 'new' evidence as if it had to overcome some hurdle rather than assessing the previous evidence with the 'new' evidence. The judge had failed to make clear credibility findings with respect to the appellant's wife which affected the judge's assessment of the Article 8 claim. The decision was unsafe and should be set aside.

Conclusions and reasons

24. I find there is no error of law in the judge's decision for the following reasons. The judge considered the expert evidence and gave adequate reasons for the weight she

attached to it. She considered this evidence in the context of the appellant's evidence and took it into account when assessing credibility. Her finding that the appellant was not a credible witness was open to her on the evidence before her.

25. At [40], the judge set out the opinion of Mr Kanat:

> "I am of the opinion and belief that the above-mentioned 5 documents are authentic documents considering the way they are structured and compiled and the language used etc."

She attached little weight to this opinion because it was vague, it was not verified by appropriate enquiries and there was insufficient other evidence to show that Mr Kanat had the required expertise.

26. The authenticity of the court documents is further undermined by the judge's findings on credibility. The appellant made no mention at the previous hearing that he had instructed a lawyer to access his criminal record, he failed to serve the warrant and other court documents on the respondent after receiving the expert opinions and he returned to Turkey with his family in the knowledge there was a warrant for his arrest. The judge clearly set out the chronology of events and gave adequate reasons for finding these matters undermined the appellant's credibility and the authenticity of the documents at [31] to [37]. The judge took into account all relevant matters in coming to her conclusions.

27. It is apparent from [32] that the judge appreciated the expertise of Mr Kanat and Ms Laizer and the basis upon which Mr Kanat's opinion was sought. Ms Laizer was instructed to provide a specific report in respect of the five court documents. She contacted Mr Kanat who provided his opinion. She considered this opinion in the light of the appellant's evidence that he had obtained the documents with the assistance of Mr Polat, to whom he had given PoA. Having attached little weight to the opinion of Mr Kanat the judge was entitled to attach little weight to Ms Laizer's report dated 27 January 2015 because it amounted to an affirmation of Mr Kanat's opinion.

28. In her report dated 9 September 2019, Ms Laizer concluded that the appellant came from a politically active pro-Kurdish area associated with past and ongoing support for the PKK and pro-Kurdish movement. She concluded he would be at risk as an absconder from military service and he could not avail himself of the new military service law because these exemptions were only conferred on persons with no political history.

29. In this case, the appellant has no adverse political history and his claim based on actual or imputed political opinion was dismissed by two previous Tribunals. The judge acknowledged this at [48]. The appellant's subsequent actions demonstrated he did not have a well founded fear of persecution. The judge took into account the recent change in military service law at [41]. She took into account Mr Kanat's

opinion that a person who had no political problems in Turkey would be able to pay a fine. The judge did not misread Ms Laizer's report dated 9 September 2019. The expert evidence before the judge did not demonstrate a risk on return because of imputed political opinion.

30. At [49], the judge considered the 'new' evidence in light of two previous findings that the appellant had fabricated his claim. Her finding that the 'new' evidence cast further doubt on his credibility was open to her on the evidence before and she gave adequate reasons for coming to that conclusion. She properly directed herself in law and there was no error of law in her approach to the 'new' evidence.

31. In assessing Article 8, the judge took into account the passage of time. The weight to be attached to the public interest was not reduced given the appellant's conviction and his re-entry to the UK in breach of a deportation order. Contrary to Mr Caskie's submission, even if the appellant was not subject to the deportation provisions, little weight should be attached to the appellant's family life formed whilst he was unlawfully present in the UK.

32. It was the appellant's evidence that he could not enrol his son in school because this had to be done by the father and he was unable to approach the authorities. The evidence of the appellant's wife was that she could not register the children because she was not Turkish and she did not have a Turkish identity card. The appellant could not register them because he was wanted. The judge considered the evidence of the appellant's wife and referred to it at [21] and [53]. At [62] the judge stated, "The Appellant and his wife stated that their son being outwith (sic) the education system was a factor which impacted on their decision that his wife and children would return to the UK." It is apparent that the judge considered the evidence of the appellant's wife in coming to her conclusions at [63].

33. The judge found there was no other evidence to support the appellant's claim that he was unable to enrol his son. This finding was open to the judge on the evidence before her. In any event, the failure to refer to the evidence of the appellant's wife at [63] was not material given the rejection of the appellant's protection claim.

34. There was evidence before the judge that the appellant's wife and children visited Turkey on several occasions in 2016 [61]. The judge properly applied section 117C of the 2014 Act and took into account all relevant matters in assessing the appellant's Article 8 claim. Her finding that the appellant had not satisfied the high thresholds of 'unduly harsh' or 'very exceptional circumstances' was open to her on the evidence before her.

35. The application to admit further evidence under Rule 15(2) is refused. The judge cannot be criticised for failing to take into account evidence which was not before her. It is apparent from the Ms Laizer's expert report dated 9 September 2019 at [3(iii)] that Turkey had recently introduced an online system for a citizen to be able to check whether there are any charges against him. Ms Laizer stated that this and other

information could be obtained by registering on the government website. There was no reason why the appellant could not have obtained this evidence at the hearing before Judge O'Hagan on 17 October 2019.

36. In any event, it is apparent from the expert evidence that the appellant will not be at risk of ill-treatment because he can take advantage of the change in military service law in June 2019. Any error in relation to the authenticity of the documents was not material to the decision to dismiss the appellant's protection claim.

37. I find there was no material error of law in the decision promulgated on 20 November 2019 and I dismiss the appellant's appeal.

Notice of Decision

Appeal dismissed

J Frances

Signed Date: 5 July 2021
Upper Tribunal Judge Frances

TO THE RESPONDENT
FEE AWARD

As I have dismissed the appeal, there can be no fee award

J Frances

Signed Date: 5 July 2021
Upper Tribunal Judge Frances

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent' is that appearing on the covering letter or covering email