IAC-FH-CK-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11127/2019 (V)

THE IMMIGRATION ACTS

Heard at Field House via Teams
On 13th July 2021

Decision & Reasons Promulgated
On 1st October 2021

Before

UPPER TRIBUNAL JUDGE RINTOUL
UPPER TRIBUNAL JUDGE RIMINGTON

Between

HG
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms S Panagiotopoulou, Counsel instructed by Montague Solicitors LLP
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

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.

The appellant appeals against the decision of First-tier Tribunal Judge Louveaux, dated 19th December 2019, dismissing the appellant's appeal against the Secretary of State's decision to refuse his claim for asylum, humanitarian protection and protection under the European Convention on Human Rights.

The appellant is a Turkish national of Kurdish ethnicity born on 10th May 2000 and entered the UK by clandestine means in 2014. He sought asylum based on his imputed political opinion arising from his claimed involvement with the PKK and his ethnicity as a Kurd. An appeal to the First-tier Tribunal in April 2015 was dismissed by Judge Zahed and the appellant has since been supported by his sister and her family within the United Kingdom.

It was accepted within the grounds for permission to appeal that there were no reasons for the judge to depart from the original findings of Judge Zahed.

It was submitted, however, that Judge Louveaux erred in material respects as follows:

He failed to attach due weight to the responses to the information requests issued by the Immigration and Refugee Board of Canada ("IRBC") on 26th January 2017 relied on by the appellant because the document "predates the respondent's CPIN which was also published after the 2016 coup" [paragraph 33]. The judge fell into error because the IRBC document was referred to by the respondent in the CPIN and thus its evidential weight was not diminished because it prima facie predated the CPIN publication date.

The judge failed to give any reasons for his finding that "the background evidence does not suggest that Kurds in general face persecution on account of their ethnicity".

It was submitted that the judge failed to follow the country guidance and assess the appellant's claim with reference to all the risk factors in **IK [2005] UKIAT 00312**. His consideration of the **IK** factors at paragraph 34 of the determination was wholly inadequate, rendering his assessment of risk on return flawed. Merely because the appellant had been found not to have been of adverse interest prior to leaving Turkey did not absolve the judge from a rounded assessment of the risk factors applicable to his case on return to Turkey. In particular, he failed to have regard to the fact that the appellant would be returning to Turkey as a young male from the South East who had been absent from a considerable period of time. The Tribunal in **IK** considered that this would attract adverse interest as the authorities would be interested in someone of this profile.

It was also submitted that the judge erred in finding that the appellant did not enjoy family life with his sister and her family but that there were no more than merely emotional ties between adult siblings. The appellant had been placed in his sister's care at the age of 14 and thus the ties had been in existence for a number of years and before the appellant was an adult.

Permission to appeal was granted by Upper Tribunal Judge Kamara on the basis that it was arguable that the judge failed to follow the applicable country guidance and assess the appellant's claim with reference to the risk factors in **IK**.

In her skeleton argument before the First-tier Tribunal, Ms Panagiotopoulou advanced that the basis of the appellant's claim was that he was of Kurdish ethnicity and that he had been suspected of involvement with the PKK and had been detained in two detentions in 2013 and in March 2014, after which the father was placed on weekly reporting conditions. His father attended the first reporting date but thereafter fled to the mountains and thus the appellant's family home was raided on 22nd March 2014. The appellant and his mother were said to have been taken to the station, questioned as to the father's whereabouts and beaten and released the next day and placed on reporting conditions but did not report until 30th April 2014 and thereafter the appellant fled Turkey on 3rd May 2014.

The written skeleton argument before the First-tier Tribunal stated in summary that it was the appellant's claim that he feared persecution by the authorities owing to the cumulative effect of his Kurdish ethnicity and imputed political opinions. It was his case that his father was still living in hiding and the authorities continued to visit the family home looking for the appellant and his father. He maintained that the security situation had deteriorated further in recent times and the authorities systematically targeted anyone they suspected of anti-state views and particularly those they suspected of associations with the PKK. The country background evidence confirmed that the Kurdish population had been disproportionately targeted. It was accepted that the **Devaseelan v SSHD** [2002] UKIAT 00702 guidance applied in this appeal, but an overall assessment of fairness was required, and no account was given in the previous determination to the fact that the appellant was a minor at the time of his claim and no attempt was made by the previous judge to assess the weight to be given to the email from the British Embassy and referred to in the refusal letter.

The appellant maintained that he was of Kurdish ethnicity and his home area was a predominantly Kurdish area in the South East of Turkey. The sole reason given by the respondent for doubting the appellant's ethnicity was the fact that he used a Turkish interpreter at his interview at the time he was a minor (the judge accepted, however, at paragraph 30 that the appellant was of Kurdish ethnicity as claimed). According to the information provided, however, in a document from the Refugee Board of Canada dealing with the position in the South East of Turkey post the coup of July 2016, the Turkish government increased pressure on Kurdish language and Kurdish social, cultural and economic activities.

In dismissing the appellant's claim the First-tier Tribunal Judge in the previous determination placed weight on an email communication between the British Embassy and the appellant's father and no transcript of the verbatim conversation between the official and the appellant's father was produced, and the email was only a summary. It was clear from the transcript itself that the father referred to the fact that the family had "fear of soldiers" and in particular the official's subjective assessment was that the father did not "tell me anything special" is of concern and is indicative of the little evidential value of such evidence. Though the judge in February 2015 did not accept that the appellant was of interest to the authorities and that the authorities had not suspected him or his family of assisting the PKK, no reference was made to the country guidance case of **IK** nor was any assessment of the risk on return for the appellant undertaken at that time with reference to **IK**.

It was the appellant's account that since his departure the authorities had visited his home looking for him and that his father was living in hiding and fears persecution on return as the situation in Turkey has not improved for the Kurdish community. He is a young Kurdish male from the South East of Turkey and had been absent for a significant period.

It was also submitted that the country background evidence established that the current position following the failed coup of July 2016 was that there had been a crackdown on any expression of dissent against the government and that large numbers of HDP members and sympathisers alike had been arrested and imprisoned on alleged suspicion of association with the PKK. At the time all forms of peaceful dissent were suppressed by the government forces and there had been a significant deterioration in the human rights situation in the country. As for society, the rise of anti-Kurdish attitudes was on the rise. The government conducted a strong nationalist-conservative discourse and those who spoke the Kurdish language were not tolerated and deemed as potential terrorists.

It was submitted that there were a number of risk factors identified in **IK** which were applicable in the appellant's case and which would enhance the risk on return for him such as his Kurdish ethnicity, his area of origin, his suspected associations with the PKK, the fact that he was undocumented, the fact that he has been absent from Turkey for a period of time as a young person from the South East and his family's political profile and the fact that he will be eligible for military service, to which he objects, to name but a few.

The country background evidence highlighted the practices of arbitrary arrests and detentions, torture and impunity of a large scale throughout the country.

The report by the Immigration and Refugee Board of Canada of 26th January 2017 on the situation of the Kurds after the 2016 coup attempt confirmed that the crackdown had continued since the attempted coup and had been broadened to pro-Kurdish and other opposition voices

The background evidence confirmed that there had been no improvement in the human rights situation following the country guidance case of **IK** and the situation had deteriorated following the ending of the PKK ceasefire.

In relation to **IK [2005] UKIAT 00312**, upon return to the airport in Turkey the appellant would have to present himself to an immigration control booth staffed by the border police and there was a reasonable likelihood that he would be identified as a failed asylum seeker and could be sent to the airport police for further investigation as well as his suspected support of the PKK. He would be an undocumented returnee and asked questions over a period of six to nine hours and asked for any reasons for an asylum application, any past record at home and abroad and he should not be expected to lie. The "GBTS", the airport's information/security system, was not the only system available and other information systems included local records.

The question is whether it was reasonably likely that further investigations would be undertaken by the authorities at the airport and that should be answered with reference to a series of risk factors. His Kurdish ethnicity would be relevant and evident from his area of origin and it is likely that the police at the airport were likely to seek further information from the police in the appellant's home area which was more detailed and upon investigation of his particulars the appellant would be seen as a separatist and would be transferred to the anti-terror branch and that risk of persecution remained high.

In line with the UNHCR position, no internal relocation alternative existed.

In the light of the appellant's suspected history of association with inter alia the HDP as well as history of previous detentions, his failure to comply with reporting conditions following his last release and his Kurdish ethnicity and the current political climate of Turkish it was submitted that he would remain at real risk of persecution/Article 3 treatment on return to Turkey.

It was further submitted that the appellant had established a family and private life in that he had resided with his sister and her family since the age of 14, for the last five years, and had been allowed to freely express his Kurdish identity here without fear of repercussions.

At the hearing before us, Ms Panagiotopoulou submitted that she could not add more to her written grounds, which had been amplified in the two skeleton arguments, but emphasised that the judge had failed to properly engage with the case of **IK** and compartmentalised his findings when assessing whether the appellant would be at risk on return to Turkey. She submitted that the appellant was of Kurdish ethnicity and had been absent from Turkey for seven years (albeit that the determination took place in 2019). The appellant had not asserted that he was opposing the draft as a conscientious objector but merely that he would be identified as someone who had evaded the draft.

We pointed out that the factual matrix was rather different from that of the appellant in **IK**, which had been determined in 2004, but she re-iterated that

the Kurdish community had been targeted particularly post the 2016 coup. We were referred to the CPIN Fact-Finding Mission of October 2019, particularly of 5.1.4, whereby she submitted that Kurds were assumed to be PKK supporters and she submitted that any Kurd, particularly a male young Kurd who had been absent for a period of time would be at the receiving end from heightened attention from the authorities and he would be questioned. She also added that the appellant had made an asylum claim. We put it to Ms Panagiotopoulou that there was no evidence to support his military service argument although Ms Panagiotopoulou submitted that he would have been called up, bearing in mind his age.

Ms Cunha submitted that the appellant had been found by Judge Zahed not to be consistent in his account that the authorities were looking for him and that his father maintained contact with his son and with the authorities. She relied on the submissions made by Chris Howells, Home Office Presenting Officer, and submitted that there was nothing in the grounds to set aside the decision and the grounds were a mere disagreement with how Judge Louveaux had approached the case. There was no evidence that the appellant had applied for an exemption and that was according to the CPIN on military service September 2018 available to him. Further, **Sepet** was good law as could be seen at 2.4.6 and 2.4.7. Being Kurdish alone was not perceived as a risk and in **IK** there had been a previous detention. It was not explained how merely being Kurdish would put him at risk and that was evident

We pointed Ms Panagiotopoulou to the CPIN on military service, which suggested that the appellant would not even yet have been registered owing to his date of birth.

Analysis

Judge Zahed found in 2015 the appellant had no links with the PKK nor with the opposition. He made a clear finding that he had "not accepted any part of the appellant's claim" and that "neither he [the appellant] nor any members of his family have ever assisted the PKK or have thought to have assisted the PKK by the Turkish authorities". Judge Zahed found, "neither the appellant nor his family have ever been arrested or detained by the authorities and [I] find that the entire claim has been fabricated in order for the appellant to be able to live in the UK with his sister".

There had been no effective challenge to the decision of Judge Zahed, either on the weight he gave to the evidence nor in relation to the minority of the appellant, and Judge Zahed found in a decision promulgated on 9th April 2015 at paragraphs 20 and 21 the following:

> "20. I find that the appellant's father was spoken to and that the email accurately reflects the conversation he had with an official from the FCO. I find that the appellant's father [YG] has not had any problems with the Turkish authorities including the gendarmes. I find that he has not been arrested and detained as claimed by the appellant in 2013 or 2014. I find that the appellant's description of events in 2013 is vague and lacking in

detail and find that he describes the exact event as in 2014 because the events had never occurred.

21. I find that the appellant's father is living and working in Gaziantep with his wife in their family home, is in regular contact with his son and daughter, and that the appellant and his mother were never arrested detained or tortured as claimed."

This establishes that the appellant has had no political profile and we were taken to no evidence of any sur place activity in the United Kingdom. Despite the grounds attempting to undermine the approach of Judge Louveaux to Judge Zahed's decision, Judge Louveaux approached the previous decision in line with the decision and principles in **Devaseelan v SSHD** [2002] UKIAT 00702 and noted at paragraph 20 that Judge Zahed "found the appellant not be credible".

Judge Louveaux also dealt with the submissions of Ms Panagiotopoulou at the First-tier Tribunal in relation to the transcript of the telephone conversation between the appellant's father and the FCO. Judge Louveaux stated at paragraph 27:

"27. Ms Panagiotopoulou sought to argue that since there was no transcript of the telephone conversation with the Appellant's father, we cannot be certain about what was said in conversation. However, I find that is no more than an attempt to re-litigate the matter: Judge Zahed already found that the email accurately reflected the conversation that the Appellant's father had with an official from the FCO. Moreover, even if I accept, which I do not, that certain information may have been omitted or glossed over in the FCO's report of the telephone conversation, I fail to see how that would undermine my credibility findings above."

As indicated Judge Zahed's decision stands. Judge Louveaux considered the criticism and made sustainable findings at paragraph 27 that the submission was "no more than an attempt to relitigate the matter:". That was open to him. Additionally, the judge noted that criticism of the FCO report did not undermine his own previous credibility findings at paragraph 26.

It cannot be said that the judge materially misdirected himself with regard to the factors in **IK**. We were directed specifically to paragraph 126 of **IK** by Ms Panagiotopoulou but as we identified in the hearing, each case is fact-specific and the uncontested factual matrix in this case was that the appellant, unlike the appellant in **IK**, had never been detained. Paragraph 126 of **IK** reads as follows:

"126. In this appeal, there is a four year gap so far as the authorities are concerned in the Respondent's history, which they would logically seek to fill. He will be able to establish that he came to the UK in 2001 but the last official record of his residence will be in his village in Karamanmaris in 1997. We do not know how the military became aware of his presence in Istanbul but they knew his name when they came for him. By then he had been a draft evader for several years and one may

reasonably presume that the military came for him approximately when they had knowledge of where he was. An obvious concern, when a young man disappears from a village in Karamanmaris in 1997, without trace and for some years, is whether he had joined the PKK in that period. The airport police in 2004 would in our view ask questions of the Respondent to fill the time gap in his record following his leaving his village. In so doing we think it likely that they would make enquiries of the authorities in the last area where he was registered. At that point his recorded history there would be revealed. It is likely that this would include at least the October 1997 detention at the police station, some information about his family in the village, which would embrace the 2 cousins convicted with life sentences for their activities in the PKK, and the 'problems' caused by the family's resistance to the order to evacuate the village, including his uncle's experiences. We doubt that the unofficial, intimidatory and plainly illegal detention in the mountains by the military of the young males of the village in December 1997 would have been recorded, though we cannot say that the Adjudicator was necessarily in error in concluding that it would.

127. *Therefore with regard to the first ground of appeal, we hold that the Adjudicator was entitled to proceed on the basis that the Respondent's material history would become known to the authorities at the airport in the course of their enquiries. We turn then to the Adjudicator's assessment of risk and the second ground of appeal."*

It was not accepted that the appellant or his family in this case had come to the adverse attention of the authorities and indeed it was confirmed in the grounds of appeal that there was no challenge to the decision of Judge Zahed, and Judge Louveaux was entitled to take as his starting point the findings of Judge Zahed which he did. For the reasons given he did not depart from the previous findings but indeed elaborated on them.

Looking at the risk factors, the judge accepted at paragraph 31 (contrary to the grounds as drafted) that the appellant was Kurdish, recorded his age and date of entry to the United Kingdom and thus was fully cognisant of the length of time absent from Turkey; it was clear that he was a young man from the South East. However, in these circumstances, the fact of being Kurdish is not a risk factor in itself.

We accept that the political situation in Turkey has developed considerably since **IK** but there was insufficient material before Judge Louveaux to show that the situation for Kurds was per se a risk factor. That is not to say that those who are in support of the HDP are not at any risk but this is not the position here. There was insufficient evidence of political involvement and Judge Zahed had made an adverse credibility findings against the appellant on the basis of the documentation and stated that the events as described by the appellant

"had never occurred". Against the backdrop of that previous First-tier Tribunal determination it was open to Judge Louveaux to reject the appellant's assertion that the authorities had continued to visit his family home.

We turn to the submissions of Ms Panagiotopoulou when relying on "responses to information requests" issued by the IRBC on 26th January 2017. The criticism in the grounds of appeal was that Judge Louveaux did not appreciate when resisting the responses to information requests, and when citing the CPIN on Kurds from August 2018 as post-dating the coup and requests, that the CPIN itself also relied on the responses from the IRBC. In fact the judge referred in his decision to two CPINS, one entitled "Country Policy and Information Note: Turkey: Kurdish political parties" dated August 2018 and the second, entitled "CPIN: Kurdistan Workers' Party (PKK)" dated August 2018. The first references the IRBC from an IRBC report of June 2016 not a response; the coup was in July 2016. The second makes no reference to an IRBC response. The judge, however, was correct in stating the CPIN post-dated the responses to the requests but even so, additionally and specifically stated that

> "Moreover, the background evidence before me does not suggest that Kurds in general face persecution in Turkey on account of their ethnicity".

Thus the judge at paragraph 33 separately and alternatively found, having considered the background evidence as a whole and considered that Kurds did not face persecution. That finding was open to Judge Louveaux and there was no indication that the threshold of persecution towards Kurds had been demonstrated on the evidence before him overall. It is a matter for the judge as to the weight he accords to the evidence.

In relation to the criticism of the approach taken to the country guidance, the CPINs of August 2018 are no longer listed and have been superseded by CPINs which do not assist the appellant and indicate that the judge did not materially err.

The CPIN Country Policy and Information Note Turkey: Kurds Version 3 February 2020 itself demonstrates that there needs to be some evidence of political involvement, for example, when addressing the risk to the Kurds the CPIN at 6.2.1 states as follows:

> *"**6.2 Conflation with the PKK***
>
> *6.2.1 Foreign Policy, an American news outlet reporting on international news and policy, reported as follows in October 2019: 'In Turkey, support for the PKK, which Ankara and Washington consider a terrorist group, has long been grounds for dismissal or imprisonment. But what exactly constitutes support is subject to the state's discretion, and the line is by no means fixed. Instead, it ebbs and flows, determined by developments in the ongoing conflict between the government and Kurdish separatists—or by the election cycle.' [92]*

6.2.2 The HO FFT met Andrew Gardner of Amnesty International, who stated, 'The Turkish state regards people who are pro-autonomy or who are seen as against the government or defending Kurdish rights as within the political influence of the PKK; the Turkish state criminalises these people. The definition of terrorism in Turkey has gone beyond what it is. It defines it as being within political aims/scope rather than violent methods. For example, anyone who speaks out against the government on issues of Kurdish rights could be argued in the current context to be supporting the PKK, or anyone criticizing the post-coup cases, to be supporting FETO.'[93]

6.2.3 ..., 'Criticism of the government in relation to the Kurdish issues can be used to charge people with terrorist propaganda. Continuously criticising the government, you could be charged with not only propaganda for a terrorist group but also being a member of a terrorist organisation.'[95]

6.2.4 An HDP MP told the HO FFT, 'The level of evidence accepted to be arrested and charged under the propaganda for a terrorist organisation is very low. It could be anything interpreted as against the government, for example I do not want my child to die in Turkey or I want peace in Turkey. 7,000 people are in prison for political reasons but not all are HDP members, they are people who have supported, sympathised or had a political or Kurdish opinion.'[96]

6.2.5 ...

6.2.6 A human rights lawyer told the HO FFT that communication is monitored by the police and, '[...] if you post anything to do with government buildings or departments you can be arrested. Police or hardcore AKP supporters will pick up on tweets. Cem Kucuk [a journalist] targets people who do not support the AKP; they will be arrested. These people are called 'trolls'. The government pay hundreds of people to check social media to find people who tweet or use hashtags criticising the government.'[99]

6.2.7 A human rights lawyer suggested to the HO FFT that the police conduct random checks, which includes looking at social media on peoples' phones. The source described this as 'not an advanced process of stopping/searching' but 'if you have darker skin (from the east of Turkey), they will they check Twitter, Instagram, Facebook'[100].

6.2.8 The HO FFT met with the Director of a Turkish organisation in the UK who claimed that 'A person can be in prison for 6 months or so for sending a political tweet; they are accused of

having links with the PKK, and a person does not have to be well-known to receive such treatment.'[101]

6.2.9 …. However, a representative of the Turkish Ministry of Justice stated that anyone who commits crime in the name of the PKK or any other terrorist organisation will be prosecuted and convicted if there is evidence, whether they are Turkish, Kurdish or Syrian. Prosecutors will focus on activities, not ethnicity[104]*".*

As set out in the CPIN on Kurds at 5.8.2, there may be an issue of discrimination but not one of persecution. Indeed, this section of the CPIN highlighted that persons who have previously lived in the East of Turkey "may experience some discrimination with regard to education, employment and accommodation but discrimination with regard to accommodation was not much". The source further stated that there is no discrimination towards Kurds from the state and there is no direct discrimination in law, but discrimination can happen at a societal level.

The Report of a Home Office Fact-Finding Mission Turkey: Kurds, the HDP and the PKK June 2019 also stated at 6.12.4:

> *"A representative of a confederation of trade unions stated, 'the government have Kurds who are pro-government, who support the AKP. Kurdish ministers and civil servants are not discriminated against if they are pro-government. If you empathise with Kurdish ethnicities and identity, then you are discriminated against.'"*

The evidence did not indicate persecution of Kurds within Turkey overall. Nor does being an asylum seeker on return to Turkey place the appellant at risk of persecution and even if he is Kurdish and/or from the South East there is simply insufficient material to demonstrate that, even cumulatively, he would be at risk. . There may be discrimination but that does not appear to have reached the level which warranted a finding of persecution.

The judge went on to accept, citing **IK**, that the appellant may be identifiable as a failed asylum-seeking Kurd on return and transferred to the police station for further questioning but that the appellant was of no interest to the authorities and

> "I do not find that this would expose the appellant to a real risk of persecution or treatment contrary to Article 3 ECHR."

It was submitted that the judge had failed to consider the risk factors cumulatively but none of the risk factors identified either separately or cumulatively would place the appellant at risk. We turn to the criticism of the judge's approach to military service.

The judge dealt with the issue of military service and this was found not to be a risk factor. The judge adopted the approach set out by the House of Lords in **Sepet [2003] UKHL** and he specifically recorded so at paragraph 40,

> "there was no evidence before me that the treatment of Kurds for failing to undergo military service in Turkey is discriminatory".

Further, he found as a fact, that the appellant was not a conscientious objector.

We also note that the Country Policy and Information Note Turkey: Military service Version 2.0 September 2018 states as follows:

> *"2.4.6 In Sepet & Another v. SSHD [2003] UKHL 15, it was accepted that, in relation to military service in Turkey, '…there is no reasonable likelihood that the applicants would have been required to engage in military action contrary to basic rules of human conduct, whether against Kurds or anyone else' (paragraph 26).*
>
> *…*
>
> *2.4.20 However, paragraph 5 of Sepet & Another v. SSHD [2003] UKHL 15 goes on to conclude that, 'It is an agreed fact that those who refuse to perform military service in Turkey (including Kurds) are not subject to disproportionate or excessive punishment, in law or in fact, as a result of their refusal. Draft evaders are liable to prosecution and punishment irrespective of the reasons prompting their refusal.'*
>
> *2.4.21 Therefore, in the majority of cases, it is unlikely that the consequence of a person's general unwillingness to serve in the armed forces or objection to enter a 'combat zone' will be such that they can demonstrate that they would be at real risk of serious harm and require protection.*

And further in terms of eligibility the CPIN states

> *"3.2.2 Article 2 (as amended) of Law No. 1111 of 1927 states that 'Military [eligibility] age for every man shall be according to his age recorded in his basic citizenship register and shall begin on 1st January of the year when he reaches the age of 20 and shall end on 1st January of the year when he reaches the age of 41".*

In 2019 the appellant was in the year in which he would reach 19 not 20 years. In effect, the appellant would not have been registered for military service at the date of the First-tier Tribunal hearing and this therefore could not stand as a risk factor which the judge had failed to consider.

Overall, the judge adequately addressed the various risk factors, and his approach was open to him.

Turning to the criticism of the treatment of Article 8 ECHR, the judge was clearly aware of the principles of **Kugathas v Secretary of State for the Home Department** [2003] EWCA Civ 31; [2003] INLR 31. The appellant has his parents in Turkey and although the appellant has lived with his sister in the UK since arriving in 2014 it was open to the judge, bearing in mind the findings of Judge Zahed and the evidence before him to determine

> "there was no evidence that the appellant's sister was like a mother to the appellant before me. Nor was there any evidence of anything more than normal emotional ties as between adult siblings".

As such, his findings in relation to Article 8 in terms of family life were sustainable and, having found the appellant's private life was established at a time when he was either here unlawfully or when his immigration status was precarious, it was open to the judge to give little weight to his private life under Section 117B of the 2002 Act. That approach cannot be criticised and overall the decision is adequately reasoned and will stand.

Notice of Decision

The decision of the First-tier Tribunal contains no material error of law and will stand. The appellant's appeal remains dismissed.

Signed Helen Rimington Date 14th September 2021

Upper Tribunal Judge Rimington