



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

**Appeal Number: PA/03052/2020
[UI-2021-000774]**

THE IMMIGRATION ACTS

**Heard at: Field House
On the 24 February 2022**

**Decision & Reasons Promulgated
On the 11 April 2022**

Before

**Upper Tribunal Judge Blum
Deputy Upper Tribunal Judge Mailer**

Between

**MR MEHMET OLMEZ
ANONYMITY DIRECTION NOT MADE**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Daykin, counsel, instructed by Gulsen and Co

**For the Respondent: Ms A Everett, Senior Home Office Presenting
Officer**

DECISION AND REASONS

1. The appellant is a national of Turkey born on 10 August 1987. His appeal against the respondent's refusal of his protection and human rights claims dated 21 January 2020, was dismissed by First-tier Tribunal Plumptre, in a decision promulgated on 13 July 2021.
2. On 26 October 2021 the appellant was granted permission by First-tier Tribunal Judge Cox to appeal against that decision. He stated that it was

arguable that the Judge failed to properly apply or direct herself in accordance with the CG decision in IA and Others [2003] UKIAT 0003.

3. In her Rule 24 response to the grounds of appeal, dated 26 November 2021, the respondent did not oppose the appellant's application and agreed that the First-tier Tribunal Judge failed to adequately consider IA and others, in that she “seemed to dismiss it as it was made some years ago at a time when the situation in Turkey was very different, as the CPIN notes demonstrate” [57]. The decision did not indicate that she gave any consideration to the findings in IA and others or identify “what cogent evidence” justified departing from the country guidance.
4. In the circumstances, the respondent invited the Tribunal to determine the appeal with a fresh oral (continuance) hearing to consider whether the appellant would be at risk on return to Turkey, whilst preserving the findings of fact made by the Judge of the First-tier Tribunal.
5. Having considered the appellant's grounds of appeal and the Rule 24 response, we find that the First-tier tribunal Judge did not adequately consider the decision in IA and others, nor identify any reason for departing from it.
6. We accordingly set aside the decision of the First-tier tribunal.
7. Ms Daykin, who represented the appellant before the First-tier Tribunal stated that the whole determination is challenged. She did not accept that the decision could be remade with preserved findings as those findings were marred by legal error.
8. She identified five grounds in her application for permission to appeal: in particular, she contended that despite the Judge’s apparent acceptance, on the basis of the court documents submitted as evidence, that the appellant was prosecuted in Turkey for sharing PKK propaganda and detained for 40 days, that they do not provide evidence that he was ill treated [44].
9. She submitted that the Judge’s conclusions are at odds with the country guidance in IA and others (Risk - Guidelines - Separatists) Turkey CG [2003] UKIAT 00034 as well as the objective evidence and the respondent's policy guidance. Whilst acknowledging the decision in IA, she submitted that the Judge failed to apply it as it was made eighteen years ago when the situation was different in Turkey [57].
10. The Tribunal in IA set out the factors which inexhaustively can be considered to be material in giving rise to potential suspicion in the minds of the authorities concerning a particular claimant.

- (a) The level, if any, of the appellant's known or suspected involvement with the separatist organisation. Together with this must be assessed the basis upon which it is contended that the authorities knew of, or might suspect such involvement.
- (b) Whether the appellant has ever been arrested or detained and if so in what circumstances. In this context it may be relevant to note how long ago such arrests or detentions took place, if it is the case that there appears to be no causal connection between them and that the claimant's departure from Turkey, but otherwise it may be a factor of no particular significance.
- (c) Whether the circumstances of the appellant's past arrest(s) and detention(s) (if any) indicates that the authorities did in fact view him or her as a suspected separatist
- (d) Whether the appellant was charged or placed on reporting conditions or now faces charges
- (e) The degree of ill treatment which the appellant was subjected in the past
- (f) Whether the appellant has family connections with a separatist organisation such as KADEK or HADEP or EEHAP.
- (g) How long a period had elapsed between the appellant's last arrest and detention and his or her departure from Turkey. In this regard it may of course be relevant to consider the evidence, if any, concerning what the appellant was in fact doing between the time of the last arrest and detention and departure from Turkey.
- (h) Whether in the period after the appellant's last arrest there is any evidence that he or she was kept under surveillance or monitored by the authorities
- (i) Kurdish ethnicity
- (j) Alevi faith
- (k) Lack of current up to date Turkish passport
- (l) Whether there is any evidence that the authorities have been pursuing or otherwise expressing an interest in the appellant since he or she left Turkey.
- (m) Whether the appellant became an informer was asked if become one.

(n) Actual or perceived political activities abroad in connection with a separatist organization

(o) If the returnee is a military draft evader, there will be some logical impact on his profile to those assessing him on his immediate return. Following SEPT of course this alone is not a basis for a refugee or human rights claim.

11. Ms Daykin referred to the respondent's Country Policy and Information Note: Kurdistan Workers' Party (PKK), Turkey, February 2020, which commences the assessment of risk for members or sympathizers of the PKK with factors set out in IA above and states at 2.4.2:

“while the Upper Tribunal's findings were based on evidence which is now over 16 years old, the factors if identified as relevant to assessing risk remain relevant in the current country context.”

12. She submitted that the appellant's conviction is entirely consistent with the objective evidence set out at 2.4.7:

There were reports that the counterterrorism arrest laws were used widely to silence government opponents, including alleged PKK sympathisers, and that there was very little evidence against detainees. Some interlocutors met with the Home Office fact finding team in June 2019 claimed that a person could be accused of supporting the PKK simply for posting a political tweet, or a person could be assumed to support the PKK purely by virtue of being Kurdish. The days following Operation Peace Spring, hundreds of people were reported to have been arrested and accused of supporting the PKK due to having made comments about the military operation on social media.

13. She submitted that the evidence for the objective risk of torture at the point of arrests for those suspected of supporting the PKK is clear, as set out at 2.4.10.

Although the law prohibits torture, there were reports of widespread torture following the coup attempt of 2016, mainly at the time of arrest and subsequent attention in police cells or in unofficial places of detention, such as sports centres.....Some of the interlocutors who met Home Office fact finding team (HO FFT) also suggested that those suspected of supporting the PKK could be at risk of torture in police custody, and the government did not release information on whether investigations were carried out into allegations of mistreatment in prisons and detention centres.

14. Ms Daykin also referred to the respondent's Country Policy and Information Note Turkey: People's Democratic Party (HDP), March 2020,

which confirms that the Turkish authorities consider there to be a link between HDP and PKK at 2.4.6. Despite denials by HNP of direct links with the PKK, several interlocutors who met with a HO FFT in June 2019 believed that the government considered there to be a link between the PKK and HDP.

15. Further, it is noted at 2.4.9, that counter-terrorism laws are applied broadly and have been used against government opponents. Some HDP members, and those who are active in supporting the party, and those who work on human rights issues, have been arrested for acts of terrorism or for aiding and abetting terrorism, such as spreading terrorist propaganda. Lawyers have been accused of having links to terrorism for offering legal support to persons accused of terrorism and individuals have been accused of links to the PKK for criticising the government on the issue of Kurdish rights on social media.
16. Ms Everett on behalf of the respondent noted that she had struggled with the First-tier Tribunal's determination. She accepted that some of the factual findings made by the judge were unsustainable for the reasons set out in the grounds of appeal to the Upper Tribunal. She also accepted that the appellant would be exposed to risk on return based on his exposure to the PKK and his prosecution in Turkey for sharing PKK propaganda and subsequent detention, regardless of the other elements of his claim. In these circumstances Ms Everett agreed that it would not be necessary to make findings in respect of the other elements of the appellant's claim as the appeal could be justly determined on the basis of the facts now accepted by the respondent.
17. Ms Daykin was content for the appeal be allowed on that basis.

Discussion

18. In light of Ms Everett's acceptance that some of the adverse factual findings made by the judge were marred by legal error, we set aside the First-tier Tribunal's factual findings other than those now accepted by the respondent. We agree in the light of the parties' submissions, that it is not necessary to have a fresh oral hearing to consider whether the appellant would be at risk on return to Turkey. Nor is it necessary to determine the remaining disputed elements of the appellant's claim.
19. It is common ground that there has been a material error of law based on the failure by the Judge to give effect to the country guidance decision in IA and Others, apparently on the basis that it was made some eighteen years ago - [57]. Nor was any cogent evidence produced justifying departure from such guidance.
20. The Turkish Court documents produced, revealed that the appellant was charged with making propaganda for a terrorist organisation. As noted by

Ms Daykin, the Cyber Crime Department in Kayseri conducted an investigation on social media accounts to prevent the activities of the PKK. An investigation of the appellant's Facebook account found eight pictures that were either liked or shared by the appellant that the prosecution considered propagate terror organisations, and in which members of those organisations were presented as heroes.

21. The appellant was in fact found guilty and sentenced to imprisonment of one year, six months and twenty-two days. That period was then deferred and he is subject to five years' supervision. He was released on 6 June 2018.
22. We find that the circumstances of the appellant's past arrest, detention and prosecution indicate that the authorities did in fact view him as a suspected separatist who remains subject to five years' supervision.
23. We have had regard to the risk of torture referred to in the respondent's CPINs. Counter terrorism laws are noted to be broadly applied and have been used against government opponents.
24. We accordingly find when considering the risk factors identified in IA and the respondent's CPINs dated February and March 2020, that the appellant will be at real risk on return of ill treatment amounting to persecution or breach of his article 3 rights.
25. Having set aside the decision of the First-tier Tribunal, we replace it with the decision allowing the appellant's appeal.

Notice of Decision

The appeal is allowed

No anonymity direction is made.

C. Mailer

Signed

Dated: 15 March 2022

Deputy Upper Tribunal Judge Mailer