IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos.: UI-2023-001659

First-tier Tribunal Nos:
PA/51947/2022; IA/05137/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

7th December 2023

Before

UPPER TRIBUNAL JUDGE SMITH

Between

M G
(ANONYMITY ORDER MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Ms R Chapman, Counsel instructed by Bostanci & Rahman solicitors
For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

Heard at Field House on Wednesday 15 November 2023

Order Regarding Anonymity
Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the Appellant or members of his family, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge Graves dated 2 April 2023 ("the Decision") dismissing the Appellant's appeal against the Respondent's decision dated 9 May 2022 refusing his protection and human rights claims. This is the Appellant's second appeal, his first having been dismissed by Immigration Judge Lingham by a decision promulgated on 15 March 2010 ("the Previous Decision").

2. The Appellant is a national of Turkey of Kurdish ethnicity. He arrived in this country as a minor in February 2009. He claimed to be a registered member of the DTP in Turkey, to have been mistreated and detained by the authorities in Turkey and to be of continuing interest to those authorities. By the Previous Decision, the Appellant's claim was found to lack credibility. Further submissions made by the Appellant subsequently focussed on call up papers having been sent to his family in Turkey as he had now reached the age for military service. A summons was said to have been sent to his family in 2015 and 2016.

THE DECISION

3. The issues before Judge Graves were stated to be the Appellant's age, nationality and ethnicity as a Kurd, and that he had been called to do military service and had failed to respond. He also contended that conscientious objectors form a particular social group ("PSG") in Turkey. The Appellant also relied on family members having been recognised as refugees.

4. Judge Graves did not accept that the Appellant was related as claimed to those granted refugee status ([37]). She also noted the absence of evidence about their status and the reasons for their recognition as refugees. Judge Graves relied on the findings made in the Previous Decision in relation to the Appellant's risk profile. The Judge went on to consider the Appellant's sur place activities in the UK but did not accept that those would bring him to the adverse attention of the Turkish authorities ([41]). For those reasons, she did not accept that the Appellant had any actual or perceived involvement with a separatist organisation nor that he had been arrested or detained previously. The Judge did not accept that the Appellant had established a family profile which would put him at risk ([43]). Whilst accepting that the Appellant was a Kurd, the Judge pointed out that he had not established that he was Alevi.

5. Judge Graves then turned to consider the issue of draft evasion and the Appellant's failure to respond to call up. She found that the Appellant would be likely to face legal consequences or punishment for failure to answer to call up. He might be imprisoned and would then be required to complete that service which would be for twelve months ([45]). However, the Judge did not accept that objection to military service and punishment for failure to perform it was sufficient to engage the Refugee Convention or Article 3 ECHR. She accepted however that insofar as the objection was based on the Appellant's ethnicity, he may fall within a PSG and might for that reason come within the Refugee Convention protection. However, in order to do so, the Appellant would have to show that military service

would require him to commit acts contrary to the basic rules of human conduct or that he would be subjected to treatment either during military service or in prison that would be persecutory or amount to serious harm.

6. The Judge found at [48] of the Decision, based on background evidence, that, whilst that evidence "raise[d] concerns about the actions of groups arguably under the control of the Turkish military, and comment[ed] on discriminatory treatment, disruption of services and other concerns", those "[did] not meet the threshold of acts in breach of human rules of conduct or establish a deliberate policy or official indifference to the widespread actions of a brutal military". Having taken into account the evidence of the Appellant's expert, Ms Sheri Laizer ("the Expert"), at [49] of the Decision, the Judge found that the Appellant could not meet the first limb of the test.

7. Judge Graves went on at [50] to [56] to consider the second limb of the test. Since this is the focus of one of the Appellant's grounds of challenge, I deal with that part of the Decision below. The Judge concluded at [56] that the Appellant had failed to show that he would have a well-founded fear of persecution as a Kurd or that he would face treatment contrary to Article 3 ECHR as a result of having to perform military service or as punishment for not responding to call-up. The Judge relied in that part of the Decision on the House of Lords judgment in Sepet & Another v Secretary of State for the Home Department [2003] UKHL 15 ("Sepet") and the Tribunal's decision in IK (Returnees – Records – IFA) Turkey CG [2004] UKAIT 312 ("IK"). She found that the Appellant's evidence did not establish that the situation had changed since those decisions.

CHALLENGE TO DECISION

8. The Appellant raises two grounds of appeal under the following headings:

Ground 1: Erroneous assessment of risk profile.

Ground 2: Erroneous finding that not at risk of persecution due to draft evasion.

9. Permission was refused by First-tier Tribunal Judge Barker on 4 May 2023 in the following terms:

> "2. The grounds disclose no arguable error of law in the First-tier Tribunal Judge's decision.
>
> 3. The Judge had proper regard for all of the evidence and the relevant law. She carried out a very detailed and comprehensive assessment of all the relevant issues, and made clear and well-reasoned findings on all material matters.
>
> 4. Despite what is said in the grounds submitted with the application for permission to appeal, it is clear from the decision and reasons that whilst the respondent may have accepted that the appellant had conducted some low level political activity in the UK, it was not accepted that he had demonstrated that his family members had a political profile in Turkey,

> significant or otherwise. The Judge makes proper reference to the previous Judge's findings in this regard, and in the absence of any new evidence in this regard, was entitled to make the findings that she did at paragraphs 37 and 38 about the appellant's actual and perceived political and other risk profile.
>
> 5. The Judge's findings that the appellant had not demonstrated that his political profile, either actual or perceived, was sufficient to place him at risk on return, are well-reasoned and sustainable in those circumstances.
>
> 6. Furthermore, whilst the Judge considered the evidence of the appellant's draft evasion, she makes well-reasoned and sustainable findings that any punishment issued in this regard did not amount to persecution, serious harm or Article 3 ill-treatment. These findings are sustainable given the extant country guidance and other findings relating to the appellant's risk profile.
>
> 7. The grounds of appeal amount to nothing more than a disagreement with the Judge's well-reasoned and sustainable findings."

10. The Appellant renewed the application to this Tribunal. Permission to appeal was granted by Upper Tribunal Judge Perkins on 22 June 2023 in the following terms:

> "1. The grounds are (with respect to counsel) well drawn and arguable and are not likely to benefit from my summarizing them. I give permission on each ground.
>
> 2. The gist of the appeal is that the Judge unlawfully understated the risk facing the appellant by reason of his ethnicity, (modest) political activity and family association and failed to decide if he would face a real risk of ill treatment as a draft evader."

11. I had before me an indexed bundle of documents relevant to the appeal and challenge to the Decision (referred to below by reference to the pagination in that bundle). I also had the Appellant's amended skeleton argument before the First-tier Tribunal and the Respondent's review. Ms Chapman provided a very helpful skeleton argument dated 8 November 2023 for the hearing before me. There was no Rule 24 reply from the Respondent.

12. The matter comes before me to determine whether the Decision contains an error of law. If I conclude that it does, I must then consider whether to set aside the Decision. If I set aside the Decision, I must then either re-make the decision or remit the appeal to the First-tier Tribunal to do so.

13. Having heard submissions from Ms Chapman and Mr Terrell, I indicated that I would reserve my decision and provide that in writing which I now turn to do.

DISCUSSION

14. I take the Appellant's grounds in order.

Ground One

15. The Appellant sets out a number of factors which it is said put the Appellant at risk. Those are:

(a) The Appellant is from a pro-Kurdish area of Turkey associated with support for the PKK;

(b) The Appellant is from a pro-Kurdish family – his great uncle is said to be a high profile PKK guerilla;

(c) A large number of the Appellant's family are said to have been recognised as refugees and are in possession of status documents in that regard;

(d) The Appellant has engaged in "some, albeit minimal and low level pro-Kurdish political activity in the United Kingdom";

16. It is said in the grounds that these factors were all accepted by the Respondent. Mr Terrell disputed that. He also pointed out that the Judge had considered the factors put forward but had not accepted all of them. Those at (b) and (c) in particular were placed in issue.

17. Mr Terrell drew my attention to [37] of the Decision as follows:

> "While the appellant now asserts that his family have a wider political profile, and so risk factors in IK, as to wider familial political profile, did apply, I do not have evidence to show the individuals the documents belong to, apart from [Mr M] and [Mrs B G], are in any way related to the appellant, and share any more than a surname. I do not know whether the appellant's surname is common or unusual, and do not have sufficient evidence to find that the appellant would be associated with these other people. I do not even have witness statements from them, explaining how, if at all, they are related to the appellant. While some of them appear to have been granted refugee status, I also do not have evidence to show they were granted status as a consequence of actual or perceived political opinion. When asked, the appellant did not know. Whether or not these people were here before 2010, there is insufficient evidence before me to find that IJ Lingham's findings should be departed from, about which, if any, risk factors in IK applied to the appellant in 2010."

18. Those individuals who the Judge accepted were shown to be related were also the subject of findings made in the Previous Decision. As Judge Graves pointed out at [21] of the Decision, those persons were said to be "loosely related" to the Appellant. That then deals with factor (c).

19. Mr Terrell was unable to point me to any finding made by Judge Graves in relation to the Appellant's great-uncle. That appeared to be however because that was not a factor raised before the Judge. There is mention of it by way of an assertion in the further submissions (page [38]). That is the reference given in Ms Chapman's skeleton argument before this Tribunal but there is no reference there to any evidence supporting this assertion. I accept that there is mention of this in the amended skeleton argument before the First-tier Tribunal but again no cross-reference to any evidence in support of the assertion. There is no mention of this in the

Appellant's statement (pages [26] to [29]). I can find no reference to this factor in Ms Laizer's report. Ms Chapman did not take me to any evidence in her oral reply.

20. Discounting factors (b) and (c) therefore, one is left as risk factors with the area of Turkey from which the Appellant emanates which was a factor in existence at the time of the Previous Decision and the Appellant's sur place activities.

21. The Appellant's grounds realistically accept that the Appellant's sur place activities are at "a low level" and "minimal". Judge Graves dealt with this factor at [41] of the Decision as follows:

> "As to the appellant's *sur place* activities in this country, he relies on an image of Newroz celebrations, attended by hundreds of other people, a march on Oxford Street, and a picture of him standing under a television screen, which he says was taken in the Kurdish Association. He vaguely referred to some other rallies, although it is unclear to me whether these include attendance at other Newroz celebrations or marches, and if so what they were about, when they took place and where they were, nor what the appellant's role in them was. I have not been directed to any real evidence of his having any political motivations, and consider his profile, at best, to be below that of a 'low level activist'. I find the evidence does not establish that he has come to the attention of the Turkish authorities since he has been in this country or in Turkey, or that he would do so in the future, as the result of the minimal activities he relied on at hearing. Given the length of time he has lived in this country, he would have had the opportunity, if he were so motivated, to be prolifically politically active, yet has not produced evidence, whether it is oral, documentary, photographic, or otherwise, of any pro Kurdish anti Turkish government political opinion or profile."

22. Accordingly, and taking into account the findings made in the Previous Decision which Judge Graves did not depart from due to lack of evidence to do so, the basis on which she proceeded to deal with the Appellant's case based on draft evasion is set out at [43] of the Decision as follows:

> "I find the appellant has not identified actual or perceived involvement with a separatist organisation, nor that he has been arrested or detained (a-c). I therefore do not accept the appellant has been placed on reporting conditions or has suffered ill treatment (d-e). I find the appellant has not established a family profile or links to any political organisation, or separatist organisation, whether actual or perceived (f-g) and therefore none of the initial risk factors apply. As to (h) there is nothing before me to suggest monitoring of the appellant or his family members. As to (i) and (j) the appellant is Kurdish, but has not established that he is an Alevi. As to (k) I do not know whether he has, or can obtain a Turkish passport, but in light of his failure to complete military service, that does not seem likely. Even if the appellant were Alevi, he has not established that (l-n) apply, save for the call up papers, which support a finding that the risk factor at (o) does apply, in relation to which the Upper Tribunal says:
>
> *'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 Sepet of course this alone is not a basis for a refugee or human rights claim.'"*

The reference to various letters in that paragraph are to the factors set out in IK.

23. The basis on which Judge Graves assessed the risk to the Appellant as a draft evader is the gravamen of the complaint in ground one. In addition to citing part of [43] as set out above, that ground also makes reference to [55] of the Decision where the Judge said this:

> "As to the punishment the appellant would face for draft evasion, the Respondent says that as to conditions and treatment if facing imprisonment, the situation has not changed, since it was considered in Sepet & Anor in 2003. Ms Laizer says the likely sentence is from two months to three years. Further that there are no military courts or prisons for draft evaders. As to the other sections of the most recent addendum report (AB99 onwards) there is repeated reference to the appellant being a pro Kurdish activist, or his profile, but as above, I find that has not been established. In Ms Laizer's first report, she comments on a rise in allegations of torture, ill treatment and punishment in police and military custody and prison over recent years, but again I find it difficult to separate the risk of such treatment from those who are political detainees, from those such as the appellant, without a real or perceived political profile. I find the evidence is not sufficient to find that only because the appellant comes from a Kurdish area, is Kurdish and a draft evader, he would be perceived to be a political activist or separatist. The appellant has been involved in at best, minimal political activities and even if not required to lie, on return, can truthfully say he was in this country, since the age of fourteen and so missed his call up, has been on one occasion to the Kurdish Association, to Newroz celebrations and apart from that, participated in minimal activities."

24. I will return to that paragraph when considering the second ground. Under the heading of the first ground, however, it is said that the Judge erred in failing to provide sufficient reasons for finding that the Appellant would not be perceived by the authorities on return as a separatist. This submission relies on what is said to be the accepted factual history with which I have already dealt. That history was not accepted by the Judge for the reasons she gave. The submission relies also on the evidence of the Expert. Here again, however, the Judge did not accept that evidence or at least not all of it.

25. Paragraph [54] of the Decision sets out the Judge's findings on the Expert reports as follows:

> "In terms of Ms Laizer's report, I do accept her expertise and experience to comment on such issues. My concern, however, is despite having been (quite appropriately) provided with the previous decision of IJ Lingham, the assessment of risk to the appellant at the point of return, appears to encompass aggravating risk factors, such as the appellant first having to serve a sentence for having committed political offences or having membership of the DTP or the HDP (2(iv) or offences like 'insulting the president' (2(v)), which have not been established to apply in this case. There is comment on the appellant's risk profile, or familial political profile,

> which I find has not been established. Much of the addendum report relates to whether Turkey should offer some alternative to military service and recognise the right to object on conscientious grounds, which is not a matter that brings the appellant's case within the ambit of the Refugee Convention, which does not extend so far that it is capable of inhibiting the right of a sovereign national to require its citizens by law to undertake military service, on the law as it is before me, I find the report does establish incidents, and some discriminatory treatment of Kurds, as well as reports of suspicious deaths of Kurdish recruits, but does not establish that the treatment this appellant would face on return, if required to do his military service, would amount to persecution, or to serious harm."

26. Again, I will consider that paragraph further under the second ground. Given the Judge's findings in relation to the facts which she did accept and taking into account the Expert's reports but based on the premise which the Expert had adopted, the Judge's reasons for finding that the Turkish authorities would not regard the Appellant as a separatist are amply sufficient.

27. The Judge was therefore entitled to take as a starting point when considering the risk of persecution due to draft evasion, the summary of factors set out at [43] of the Decision as cited above.

28. For those reasons, ground one does not disclose any error made by the Judge.

Ground two

29. The starting point for this ground is the Judge's finding about what would be likely to happen to the Appellant following return ([45]):

> "I do accept that military service is compulsory in Turkey, and, as is demonstrated by Ms Laizer's report, and the CPIN, there is no civil alternative in Turkey to military service, no grounds for exemption apply, and the option to pay a fine or fee, is not available to this appellant. I find, that on return to Turkey, it is likely that the appellant will face legal consequences or punishment as a result of failing to answer the call to do military service, which may include a period of imprisonment, and will then also be called upon to complete that service, which is likely to be for up to twelve months. The respondent agrees with Ms Laizer, and with the Upper Tribunal, that any routine checks would establish immediately on return that the appellant had not completed his service. Even if the appellant were not identified at the airport, Ms Laizer sets out the difficulties living in Turkey without having completed service, which amounts to 'civil death', and the likelihood of being identified at checkpoints."

30. The Judge however went on to find that the Appellant would not face persecutory treatment or ill-treatment in breach of Article 3 ECHR for the following reasons:

> "46. I find that objection to military service, *per se*, and the imposition of a legal punishment, such as a fine, imprisonment or order requiring military service, is not by itself sufficient to engage the protection of the Refugee Convention or Article 3 (Sepet & Anor). As was conceded by the

> respondent, where the appellant's objection stems from his ethnicity or views as a Kurd, which is arguably a political objection, he falls within a PSG and so may conceivably come under the protection of the Refugee Convention, regardless of any deep rooted conscientious objection to armed conflict or military service. To bring himself within the ambit of the Refugee Convention, or the ECHR, the appellant must demonstrate that military service would require him to commit acts contrary to the basic rules of human conduct, or that he would be subjected to treatment either during military service or in prison, that would be persecutory or amount to serious harm."

31. I deal first with the complaint that the Judge failed to consider whether the Appellant would be at risk of persecution on the basis of perceived political opinion arising from his Kurdish ethnicity. However, the Judge has explained that in order to bring himself within the Refugee Convention based on a Convention reason, the Appellant would first have to show that the treatment he would face during military service or in prison would be persecutory or amount to serious harm. That is the issue considered by the Judge at [50] to [55] of the Decision.

32. It is convenient at this point to pick up a point made in Ms Chapman's skeleton argument under the first ground regarding the evidence of the Expert about ill-treatment of draft evaders and those serving in the military (see [2.4] of the skeleton argument dated 8 November 2023). The Judge dealt with that evidence at [54] of the Decision as cited above. She did so however in the context of other background evidence and the judgment in Sepet and decision in IK.

33. At [53] of the Decision, the Judge set out what the other background evidence shows:

> "In terms of the conditions and treatment the appellant would face during military service itself, the respondent's CPIN agrees it may last up to twelve months and there are reports of mistreatment of conscripts and the suicide rate is high. However, there is insufficient specific information about ill treatment, to establish it amounts to persecution or serious harm, or that it is sufficiently serous by its nature or repetition. Measures were reported to have been introduced to combat the suicide rate and prevent maltreatment (2.4.9). The respondent concludes the treatment the appellant would face, on the facts of this case, are 'not so harsh as to amount to persecution or serious harm.'"

34. That paragraph has to be read with [54] and [55] of the Decision (as cited above) leading to the conclusion at [56] of the Decision that the situation has not changed since Sepet or IK and that, based on the factors set out in those cases, the Appellant cannot show that he has a well-founded fear of persecution or is at risk of ill-treatment contrary to Article 3 ECHR. In particular, the acceptance in the last sentence of [54] of the Decision about what the Expert's report shows about treatment of Kurds in military service has to be read against what the Judge says about the background evidence generally. The Judge's finding is that the evidence is insufficient to show that the level and/or frequency of ill treatment meets the threshold of persecution or ill-treatment contrary to Article 3 ECHR.

35. I have read carefully the references to the evidence set out at [2.4] of Ms Chapman's skeleton argument. However, the Judge's findings in relation to the evidence as set out at [53] and [54] of the Decision were open to her on that evidence. The articles regarding suspicious deaths and the 80% figure relates to 2012. Whilst that evidence shows that suspicious deaths in military service have continued, not all relates to Kurdish soldiers and there is a degree of cross-reference in the articles. The CPIN is referred to by the Judge at [53] – the point is there made that there are reports of mistreatment of conscripts more generally. The reference at (iv) to the Expert's evidence again turns on the Expert's reliance on risk factors which were not accepted.

36. Returning then to ground two, it is submitted that the Judge's summary of the Expert's opinion at [54] of the Decision is not a fair reflection of that opinion. It is said that the Expert's view was that simply being a Kurd and a draft evader would suffice. That is not my reading of the passage relied upon in the Expert report at page [62]. That passage is littered with references to support for political parties and the separatist movement as being reason why an ethnic Kurd might have a fear of military service. That passage also discloses the Expert's failure to engage with the findings in the Previous Decision, a criticism made by the Judge at [54] of the Decision. The Judge was entitled to find as she did at [54] of the Decision for the reasons she gave.

37. Similarly, the complaint made at [3.4] of Ms Chapman's skeleton argument does not withstand scrutiny. The Expert bases herself on the possibility that the Appellant may be found to have committed political offences or of having been a member of the DTP/HDP, but the Judge has made findings that he had not done so and had not been a member (based on the findings in the Previous Decision). The Judge considered the Appellant's position as a long-term absconder but pointed out, at [55] of the Decision, that the Appellant could truthfully say that he had been in the UK since he was a child and would have missed his call up for that reason.

38. Finally, I did not understand Ms Chapman to seek to depart from what was said in IK. The Judge considered the factors set out in that decision at [43] of the Decision. Her findings were open to her for the reasons she gave. She was entitled to conclude at [56] of the Decision that the situation had not changed since Sepet and IK and to find, based on the part of the risk profile which she accepted, that the Appellant did not have a well-founded fear of persecution based on draft evasion and would not be at risk of ill-treatment contrary to Article 3 ECHR.

39. For the foregoing reasons, ground two does not disclose any error in the Decision.

CONCLUSION

40. In conclusion, the grounds and Ms Chapman's very able submissions do not disclose any error in the Decision. Judge Graves was entitled to reach the findings she did for the reasons she gave.

41. I therefore uphold the Decision with the consequence that the Appellant's appeal remains dismissed.

NOTICE OF DECISION

The Decision of Judge Graves dated 2 April 2023 did not involve the making of an error of law. I therefore uphold the Decision with the consequence that the Appellant's appeal remains dismissed.

L K Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber
29] November 2023