Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/07326/2018**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 28th January 2019	**On 16th April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

M S S
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Sandhu (Solicitor)
For the Respondent: Mr C Avery (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. The appellant's appeal against a decision to refuse his protection claim was dismissed by First-tier Tribunal Judge C H Bennett ("the Judge") in a decision promulgated on 26th November 2018. Having taken into account country evidence, the Judge made a decision not to follow country guidance determinations in A (Turkey) [2003] UKIAT 00034 and IK (Turkey) [2004] UKIAT 00312. He found the appellant not to be a reliable or credible witness and concluded that he would not be at real risk on return. The Judge went on to consider whether the appellant might qualify for leave under Appendix FM of the Immigration Rules ("the rules") or paragraph 276ADE. He concluded that the appellant could not show that

the requirements of the rules were met and that there were no compelling or exceptional circumstances in the appellant's case. Removal to Turkey would not breach his Article 8 rights, or those of anyone else.

2. Permission to appeal was granted by a First-tier Tribunal Judge on 19th December 2018, on the basis that the Judge may have erred in declining to follow the country guidance case of IK (Turkey) without taking into account risk factors including family connections with HDP and links to the PKK, the appellant's Kurdish ethnicity, ill-treatment in Turkey, the lack of a current Turkish passport, the fact that the family come from the south-east of Turkey, a request that the appellant become an informer and the absence of any military service undertaken by him. The current state of emergency and heightened state of alert on the part of the Turkish authorities might increase the risk of detention on arrival. In granting permission, the Judge noted an arguable error on the basis that the adverse credibility findings might have been the result of undue weight given to previous applications for entry clearance to the United Kingdom.

3. There was no rule 24 response.

Submissions on Error of Law

4. Mr Sandhu relied upon the written grounds. The conduct of the hearing gave rise to concerns and the determination was very lengthy. The Judge sought to depart from the country guidance case of IK (Turkey). At paragraph 29 of the decision, the Judge found that the appellant should not be considered a credible witness because of earlier applications for entry clearance to the United Kingdom. He gave adverse weight also to the absence of formal court proceedings, an arrest warrant or medical records giving details of ill-treatment. The Judge misunderstood the country guidance case and erred as a result. The appellant supported a left wing political party, currently the HDP. The Judge made no adequate analysis of the IK risk factors and no overall assessment of the risk factors, even if the adverse credibility findings were treated as sustainable. The factors were listed in the written grounds (and reflected in the grant of permission to appeal). Turkey was currently in a state of emergency and the appellant was likely to be detained on arrival and his background checked. The evidence was not assessed in the light of the appellant's vulnerability and his circumstances.

5. Mr Sandhu said that the Judge gave undue weight to two applications for entry clearance made in May and October 2012, which were given too much prominence in the overall narrative. Several pages were devoted to departure from IK (Turkey). There was insufficient consideration given to risk factors including the history of arrests, surveillance and his brother's arrest. The appellant felt demoralised. The Judge's error in giving undue weight to the two entry clearance applications was illustrated by paragraph 29(a) of the decision, concerning the entry clearance application in October 2012.

6. On arrival at the airport, the appellant would be flagged up as someone who had not undertaken military service.

7. Mr Avery said that the decision contained no error of law. The Judge was entitled to take the entry clearance applications into account but it was apparent that they were not given undue weight. The Judge assessed all the relevant factors. In dealing with IK (Turkey), he engaged with relevant country evidence. The decision in IK (Turkey) was now very old and the Judge was entitled to depart from it where the background evidence showed that this was the appropriate course. He properly assessed circumstances in Turkey at the present date. Nothing in the grounds undermined this approach. The Judge was entitled to find that the appellant was not a credible witness and the decision was thorough and well-reasoned. This was so even though there was no mention of PD12, regarding departure from country guidance.

8. In a brief response, Mr Sandhu said that the absence of any mention of PD12 was important. The Judge mentioned his own experience of Turkish cases but this gave rise to concern rather than confidence. Events in 2016 and 2017 in Turkey showed that circumstances were now worse than in earlier years. The appellant was from the south-east of Turkey and a Kurdish area.

Findings and Conclusions on Error of Law

9. I conclude that no material error of law has been shown in the decision. The Judge maintained an appropriate focus on all the salient features of the appellant's case and the adverse findings regarding the core claims and risk on return in the light of current country and medical evidence were all open to him.

10. Dealing first with Mr Sandhu's submission that too great an emphasis was placed on the entry clearance applications in May and October 2012, reflected in paragraph 6 of the written grounds, I find that this ground is not made out. The decision does indeed begin with the entry clearance applications but this is simply where the Judge sets out the relevant immigration history, including the appellant's arrival in the United Kingdom, the screening and substantive interviews that took place after his asylum claim, the political activities and periods of detention relied upon by the appellant as showing that he is at risk on return, events in Turkey following his departure and the visits made by the authorities to the family home.

11. The Judge returned to the October 2012 entry clearance application at paragraph 29(a) as one part of the reasoning that led to a conclusion that the appellant is not a credible witness. The decision shows clearly that there was no undue emphasis on this aspect and the Judge went on to explain why he disbelieved the appellant's core account of political activity, detention and ill-treatment. He returned to the entry clearance applications at paragraph 29(e) (on page 36) in order to pull together the

threads of analysis but there is no sensible basis for finding that they were given undue weight.

12. The decision by the Judge to depart from the conclusions reached by the Immigration Appeal Tribunal ("IAT") in A (Turkey) and IK (Turkey) is cogently reasoned. He summarised the conclusions reached in 2003 and 2004 in the light of the country evidence available at the time. Over several pages, he then set out the country evidence made available by the parties in the present appeal, including country reports dating from 2013, and more recently from 2017, from reputable sources including the United States State Department and Human Rights Watch. There was a cogent analysis of that evidence, the Judge finding that the conclusion reached by the IAT in A (Turkey), cited in IK (Turkey), that "the background evidence is that torture continues to be endemic in Turkey" is no longer supported by more recent country evidence. He found that there continue to be reports that government officials have employed torture or ill-treatment, particularly in police custody rather than in other places of detention (see the material drawn from the 2013 US State Department Report in paragraph 24 of the decision). It is true, as the representatives noted, that the Judge did not mention Practice Direction 12 but the decision shows that he had the relevant test in mind, found at paragraph 12.2. This provides that country guidance decisions are to be regarded as authoritative, where a subsequent appeal relates to the country guidance issue in question and "depends upon the same or similar evidence". The decision to depart from guidance in the IAT decisions did not depend upon the mere passage of time. The Judge had regard to recent country evidence and explained why the earlier guidance should not be followed.

13. The adverse credibility findings made by the Judge, which he set out in considerable detail over several pages (pages 33 to 42), were open to him. He paid close attention to the immigration history, the discrepancies in the accounts given by the appellant in interview and to the medical expert, the appellant's oral evidence, his activities in the United Kingdom, his ill-health, the letters written in support and the evidence from the appellant's witness and from the person he claimed to be in a relationship with.

14. The risk factors set out in paragraph 9 of the written grounds were not overlooked by the Judge. He engaged with the appellant's account of political activities and family connections to left wing parties, his Kurdish ethnicity, the claims regarding ill-treatment, the immigration history, the location of the family in Turkey, the claim that he was asked to be an informer and the fact, accepted by the Judge, that the appellant has not performed military service.

15. In relation to military service, there is, again, an engagement with country evidence, much of it dating from September 2018, regarding the consequences of a failure to report, the likely imposition of a fine and a term of imprisonment and, overall, the absence of a real risk of persecutory ill-treatment facing a person in the appellant's position. The Judge took into account in this context Sepet and Bulbul [2003] UKHL 15

and country evidence from reliable sources including the United States State Department.

16. The decision shows that the Judge had all aspects of the appellant's case clearly in mind and that he weighed all the evidence relied upon by the parties. His findings of fact are cogently reasoned, as is his decision to give weight to recent country evidence and to depart from A (Turkey) and IK (Turkey). His overall conclusion that the appellant is not at real risk of persecution or ill-treatment on return to Turkey was open to him, as was his conclusion that the appellant could not succeed on human rights grounds.

17. As no material error of law has been shown in the decision, the decision shall stand.

Notice of Decision

The decision of First-tier Tribunal Judge C H Bennett shall stand.

Signed Date 12 April 2019

Deputy Upper Tribunal Judge R C Campbell

Anonymity

The anonymity direction made by the Judge at paragraph 56 of the decision shall continue until varied or brought to an end by this Tribunal or an appropriate court.

Signed Date 12 April 2019

Deputy Upper Tribunal Judge R C Campbell