Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/14324/2016**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 5 February 2018	**On 5 March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

Y Y
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Daykin, Counsel, instructed by Gulsen & Co Solicitors
For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

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 their 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.

DECISION AND REASONS

1. This is a resumed hearing following my decision, promulgated on 2 November 2017, that the First-tier Tribunal had materially erred in law

when dismissing the Appellant's appeal against the Respondent's decision of 14 December 2016, refusing his protection claim. My error of law decision is annexed to this remake decision.

2. In summary I found that the First-tier Tribunal Judge had erred by failing to consider and apply the country guidance case of IK (returnees – records – IFA) Turkey CG [2004] UKIAT 00034 to the Appellant's case. It was accepted by both representatives at the previous hearing that IK was indeed the relevant country guidance decision and that the judge should in fact have applied it or at least provided cogent reasons for not doing so. I set aside the judge's decision, but it was agreed that certain findings of fact should be preserved for the purposes of the resumed hearing. These were, in particular:

   (i) that the Appellant was an ordinary member of the HDP;

   (ii) that the authorities regard the HDP and PKK as being very closely linked;

   (iii) that the Appellant was detained on two occasions and ill-treated;

   (iv) when released on the second occasion, the Appellant was asked to become an informant on the HDP and PKK and also to report to the authorities. He failed to comply with either condition.

3. The judge did not accept the Appellant's explanation as to why he had not obtained further information from his family on the subject of any continuing interest in him after his departure from Turkey in May 2016.

4. I issued directions to the parties following my decision on error of law. In compliance with these directions the Appellant has submitted a consolidated bundle and Ms Daykin has provided a detailed skeleton argument.

The resumed hearing before me

5. The Appellant attended the resumed hearing and, in line with discussions held at the error of law hearing, gave brief oral evidence on the issue of post-departure contact with his family in Turkey. In examination-in-chief the Appellant adopted his new witness statement at page 14 of the Appellant's bundle and confirmed that the two corrections set out in a separate document were to be taken into account.

6. In cross-examination the Appellant said the following. He has had contact with his family in Turkey but only through WhatsApp. He explained that he had contact perhaps once a month or so. He does not speak about his case with his family because he is scared and believes that communications are monitored by the Turkish authorities. He explained that the letter from the local Mukhtar had been sent to him. He had asked a friend to ask his brother to obtain the letter. The Appellant was

communicating with his friend through WhatsApp. The Appellant told me that he did not believe that communications with his friend would be monitored because the friend lived in the west of Turkey. The Appellant told me that he believed there was less concern with Kurdish issues in areas away from the south east of Turkey.

7. There was no re-examination.

Submissions of the parties

8. In his customary fair and candid manner Mr Duffy accepted that there was likely to be a risk to the Appellant in his home area in the south east of Turkey. However, he submitted that this risk would not follow the Appellant either to the airport or elsewhere in the country. He submitted that the Appellant had only ever been dealt with by the local police or gendarmes and had not previously come to the attention of the counter-terrorism agencies. He submitted that there would be no risk at the airport as his profile was simply insufficient to warrant detention at that point. Similarly, once the Appellant got through the airport, he could settle in western Turkey without there being a real risk to him.

9. In relation to the current situation in Turkey as regards the YPG and events over the border in Syria, Mr Duffy submitted that this would not in fact have a material bearing on the Appellant's profile. He accepted that IK remains the applicable country guidance.

10. Ms Daykin relied on her skeleton argument. She submitted that the evidence showed that there was an ongoing adverse interest in the Appellant, particularly as he had failed both to report to the authorities and act as an informant on the HDP/PKK. He had had some engagement with Kurdish groups in the United Kingdom. On return to the airport, even if there was nothing on the GBTS, other sources of information were available, the Appellant's history would come to light, and this would be sufficient to justify his detention. I was referred to pages C27 and C57 of the Appellant's bundle (Policy Guidance on relevant issues produced by the Respondent). It was submitted that the current situation in Turkey would only make it worse for the Appellant. I was referred to additional country information on the ability of the Turkish authorities to carry out surveillance on communications. Finally, Ms Daykin noted that the Appellant had been persecuted in the past and this was a strong indicator of future risk.

Relevant findings of fact

11. I re-state the preserved findings of fact from the First-tier Tribunal Judge's decision, as set out above:

    (i) the Appellant was an ordinary member of the HDP;

(ii) the authorities regard the HDP and PKK as being very closely linked;

(iii) the Appellant was detained on two occasions and ill-treated;

(iv) when released on the second occasion, the Appellant was asked to become an informant on the HDP and PKK and also to report to the authorities. He failed to comply with either condition.

12. On the issue of any continuing interest in the Appellant after his departure from Turkey in May 2016, I am willing to accept, on the lower standard of proof, to that there has been relevant contact by the authorities. I fully appreciate what the First-tier Tribunal Judge said about this point but it has remained a live issue and additional evidence has been adduced without objection by the Respondent. This new evidence has not been expressly challenged by Mr Duffy before me. In any event I find it to be reliable for four main reasons.

13. First, in all other material respects, the Appellant has been found to be a credible witness as shown by the favourable findings made by the First-tier Tribunal Judge.

14. Second, following his second detention the Appellant was not simply released at large, but was released on two conditions: he was required to report and he was required to provide information on the Kurdish organisations HDP and PKK (both being seen to be closely linked in the eyes of the Turkish authorities). As a matter of fact the Appellant complied with neither condition. It is reasonably likely that this would have excited the adverse interest of the Turkish authorities once the failure became apparent, which I find it would have. I note that the period of time between the release from the second detention and the Appellant's departure from Turkey was very short (a matter of days). This is not a case in which the Appellant managed to hang around in the home area without any adverse attention by the authorities pre-departure.

15. Third, the Appellant's own evidence on the issue of contact by the authorities, contained in the new witness statement is supported by the letter of the local Mukhtar at page 39 of the Appellant's bundle.

16. Fourth, the additional country information on the ability of the Turkish authorities to monitor communications lends support to the Appellant's own explanation for why he was afraid of contacting his family directly post-departure.

17. Taking everything into account I accept that: the Turkish authorities have harassed the Appellant's family as a direct result of his history.

Conclusions on risk on return

18. In assessing risk on return I apply the country guidance set out in IK. Although this is an old decision, the representatives are agreed that this remains applicable to the present appeal.

19. In light of Mr Duffy's position before me, the guidance in IK, and the current country situation, I conclude that there is a very significant risk to the Appellant in his home area.

20. I turn then to the question of risk at the point of return, namely the airport. Ms Daykin has accepted that it is unlikely the Appellant would be recorded on the GBTS. I agree. He had not been the subject of legal proceedings. However, we know that there are a number of other sources of relevant information available to the authorities.

21. Before turning to consider what might arise out of further enquiries, I conclude that the Appellant would, in the first instance, be stopped and questioned on basic matters. We know from IK and other sources that a failed asylum seeker would be readily identifiable as such by the Turkish authorities. It is highly likely that he would be asked certain questions as a preliminary matter. It is of course the case that he would have to tell the truth to any questions put to him. As a result of this it is highly likely that additional enquiries would be made if for no other reason than to check the veracity of what he was saying and to ensure that the authorities were not allowing through someone who was of material interest to them (albeit not subject to specific legal proceedings).

22. What is reasonably likely to come to light is the following:

    (i) the Appellant is Kurdish and originates from the south east of Turkey;

    (ii) he has been detained by the authorities in his home area on two separate occasions;

    (iii) it is likely that the reasons for the detentions will be a matter of record, particularly given that he was not released 'at large'.

    (iv) the Appellant was released on two conditions, neither of which he has complied with;

    (v) he departed Turkey illegally and had resided in the United Kingdom;

    (vi) the local authorities in the home area had maintained an ongoing adverse interest in him since his departure.

23. In my view this is a significant profile in the context of the risk factors set out in IK.

24. Three additional factors are to be taken into account at this stage. First, the Appellant has been persecuted in the past and paragraph 339K of the Rules applies. Second, in light of what is happening across the border in

Syria at the moment and in relation to the significant threat perceived by the Turkish authorities in respect of the Kurdish issue as a whole, it is likely that the interest in those deemed to be connected with/sympathetic to relevant organisations will be heightened. Third, the Respondent's own Policy Guidance on the issues of Kurdish ethnicity and Kurdish political parties clearly states that if a person's fear is of persecution or serious harm by the state they will not be able to relocate to escape that risk (see paragraph 2.5.1 at pages C27 and C57 of the Appellant's bundle). This is a case in which it has been accepted that there is a risk in the home area. Given the clear policy position adopted by the Respondent under the sub-heading of 'internal relocation' in her own Policy Guidance, it is difficult to see how the Respondent can argue that any risk at the point of return would be sufficiently reduced to allow the Appellant to avoid the possibility of being detained and transferred for further enquiries by the counter-terrorism agencies.

25. I conclude that there is a significant risk that this Appellant would be detained for further enquiries and transferred to the custody of the counter-terrorism authorities.

26. Once this occurs it is very likely indeed that he would be once again ill-treated by the Turkish authorities. This is consistent with what is said in IK and the current country information as cited in the Respondent's Country Information guidance. The ill-treatment would be motivated by the political opinion imputed onto the Appellant.

27. In light of the above the Appellant is a refugee and his appeal succeeds on this basis.

28. It also succeeds on the basis that his removal would expose him to ill-treatment contrary to Article 3.

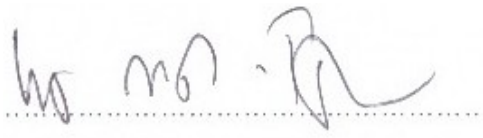
Notice of Decision

The decision of the First-tier Tribunal contained material errors of law and that decision has been set aside.

In re-making the decision in this appeal I determine that the Respondent's refusal of the Appellant's protection claim is contrary to the United Kingdom's obligations under the Refugee Convention.

I also determine that the Respondent's refusal of the Appellant's protection claim is unlawful under Section 6 of the Human Rights Act 1998 (in respect of Article 3).

The Appellant's appeal is allowed.

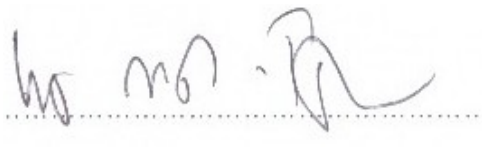
Signed  Date: 26 February 2018

Deputy Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT

FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed  Date: 26 February 2018

Deputy Upper Tribunal Judge Norton-Taylor

ANNEX: ERROR OF LAW DECISION

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/14324/2016

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Representation:

For the Appellant: Miss G Peterson, Counsel, instructed by Gulsen & Co Solicitors
For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

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DECISION AND REASONS

1. This is a challenge by the Appellant to the decision of First-tier Tribunal Judge Randall (the judge), promulgated on 3 April 2017, in which he dismissed the Appellant's appeal against the Respondent's refusal of his protection and human rights claims, dated 14 December 2016. The Appellant, a Turkish national of Kurdish ethnicity based his claim upon involvement with the HDP in South East Turkey. He claimed to have been detained on two occasions, ill-treated, and released on a condition that he became an informant and reported to the authorities.

The judge's decision

2. The judge made a number of favourable findings in respect of the Appellant's claim (paragraphs 42-55). Principally these are as follows:

    (i) the Appellant was an ordinary member of the HDP;

    (ii) the authorities regard the HDP and PKK as being very closely linked;

    (iii) the Appellant was detained on two occasions and ill-treated;

    (iv) when released on the second occasion he was asked to become an informant on the HDP and the PKK, and also to report to the authorities. He complied with neither condition.

3. The judge ultimately came to the conclusion that notwithstanding the findings of fact set out above, the Appellant would not be at risk on return. The judge found that the Appellant had not been informed about any ongoing interest in him on the part of the Turkish authorities since his departure from that country in May 2016. He did not accept the Appellant's explanation for this lack of information (paragraphs 47 and 56). The judge inferred that there was in fact no continuing interest by the Turkish authorities in the Appellant.

The grounds of appeal and grant of permission

4. The first ground of appeal asserts that the judge failed to apply relevant country guidance decisions to the case before him, in particular the well-known decision in IK (Returnees - Records – IFA) Turkey CG [2004] UKIAT 00034. Ground 2 complains that the judge placed "undue weight" on the subjective fear of the Appellant and his family in respect of the ability of the Turkish authorities to monitor telephone calls.

5. Permission to appeal was granted by First-tier Tribunal Judge Baker on 22 August 2017.

The hearing before me

6. Both representatives agreed that the decision in IK remains the governing country guidance decision in respect of risk on return in Turkish cases. It was clear that the judge had failed to apply the relevant country guidance case, and both representatives were agreed that this constituted a material error of law. Neither could indicate with any certainty that the decision had in fact been before the judge or had been brought to his attention, but it was suggested (correctly) that the decision is referred to in the Respondent's Country of Information Guidance which was indeed before the judge, or at least was referred to in submissions (see for example paragraph 39).

7. Miss Peterson sought to rely on the second ground of appeal as well, although she acknowledged that weight was a matter for the first instance fact-finder.

Decision on error of law

8. It is clear that the judge did materially err in law by failing to consider and apply IK to the Appellant's case. That decision was, and remains, the extant country guidance decision on risk on return. If it was not specifically brought to the judge's attention at the hearing, that is unfortunate. However, with all due respect, country guidance decisions are expected to be taken into account whether or not they are specifically raised by representatives.

9. This error is sufficient for me to set aside the judge's decision, and that I now do.

Disposal

10. After some discussion with the representatives I have decided to adjourn this appeal in order for a resumed hearing to take place before me on a date to be confirmed. Mr Duffy accepted that the favourable credibility findings set out previously should be preserved for the resumed hearing. I agree that that is the correct approach to take. In respect of ongoing interest by the authorities in the Appellant between his departure from that country in 2016 and now, the adverse finding of the judge would be a starting point for my assessment at the next hearing, but Miss Peterson indicated that new evidence would be forthcoming on this particular issue. In my view it is appropriate to admit

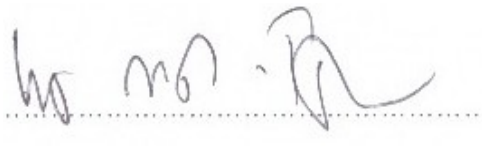
further evidence and for it to be tested by the Respondent in due course if she so wishes.

11. The core issue at the resumed hearing will be risk on return in light of IK and any other country information the parties wish to adduce.

Notice of Decision

The decision of the First-tier Tribunal contains a material error of law and it is set aside.

I adjourn this appeal for a resumed hearing on a date to be fixed.



Signed Date: 27 October 2017

Deputy Upper Tribunal Judge Norton-Taylor