Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03476/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On Friday 17 May 2019	**On 27 June 2019**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

M C
[ANONYMITY DIRECTION MADE]

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Panagiotopoulou, Counsel instructed by Montague Solicitors, LLP

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity direction was not made by the First-tier Tribunal. However, as the Appellant claims that he would be at risk in his home country it is appropriate to make that direction. 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, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

BACKGROUND

1. By a decision promulgated on 18 March 2019 ("the Decision"), I found an error of law in the decision of First-tier Tribunal Judge N M Paul promulgated on 11 January 2019 dismissing the Appellant's appeal against the Respondent's decision dated 23 January 201 refusing his protection and human rights claims. However, for the reasons there given, I determined that the error of law was confined to the Judge's failure to have regard to the country guidance in IK (Returnees – Records – IFA) Turkey CG [2004] UKIAT 00312 ("IK"). At [26] of the Decision, I therefore directed as follows in relation to re-making of Judge Paul's decision:

> "I accept therefore that the Appellant has established that the Decision contains an error of law arising from the Judge's failure to have regard to IK. However, for the reasons given, I do not accept that there is any error of law in relation to the Judge's credibility findings as appear at [19] to [25] of the Decision. I therefore preserve those findings. I set aside the remainder of the Decision and in particular [26] which concerns the general risk to the Appellant as a Kurd. That general risk coupled with such risk factors as still arise notwithstanding the adverse credibility findings will need to be reconsidered in light of the guidance in IK. There was no application by the Appellant to adduce any further evidence. Accordingly, I have given a direction only for re-listing of the appeal for a resumed hearing on the issue which remains."

The Decision is annexed to this decision for ease of reference.

APPLICATION TO AMEND GROUNDS

2. At the start of this hearing, Ms Panagiotopoulou applied to amend the Appellant's grounds in relation to a point which had arisen only as a result of the Appellant's instructions on the morning of the hearing before me. The point concerned a referral to the Helen Bamber Foundation in 2016. They were unable to assist due to resource pressures, but the Appellant was seen by Ms Jane Floyd, a High Intensity CBT Therapist from an organisation called "Talk". That organisation produced a letter dated 5 October 2016 which confirms that the Appellant was receiving counselling for low mood and depression. That letter was not referred to in Judge Paul's decision.

3. Ms Panagiotopoulou submitted that, as a result of that evidence, Judge Paul ought to have considered whether the Appellant was vulnerable and taken any vulnerability into account when assessing his credibility. She accepted that the Appellant's grounds of appeal had not raised this issue and also accepted that I had already found that there was no error of law in relation to the credibility findings which were before me but invited me to re-open the error of law

decision and, if I accepted her submission, to remit the appeal for re-making as it would be necessary for fresh findings of fact to be made.

4. Mr Jarvis, as I, observed that Judge Paul's adverse credibility findings were not based on, or not solely on, the evidence of the Appellant. Mr Jarvis indicated that he was content to proceed on the basis that the Appellant had been detained as part of general round-ups of Kurds in his home area as that was not apparently disputed by Judge Paul and was therefore part of the accepted background to the case when assessing risk on return. The disputed part of the claim was based on the individual targeting of the Appellant and his family. That dispute arose because of discrepancies between the evidence of the Appellant and his brother, with particular focus on the brother's evidence (as is apparent from the credibility findings which I set out below). Mr Jarvis accepted that Judge Paul had not made an express finding in relation to the authorities' interest in the Appellant's father at [21] of his decision. There was a discrepancy in the evidence as to whether and when the Appellant's father was detained and whether the authorities had shown any interest in the Appellant since he left Turkey. The Appellant's brother said he continued to speak to their father, but his father did not tell him whether the authorities had visited the family since the Appellant left. Mr Jarvis pointed out that there was no new evidence to undermine the credibility findings.

5. Having considered the letter from Talk on which Ms Panagiotopoulou relied and Judge Paul's earlier decision, I refused her application to amend grounds. I set out my reasons as follows.

6. Judge Paul was aware that the Appellant had been receiving medical treatment in the past; he refers at [10] of the Decision to the Appellant's evidence that "he had received treatment for about 5-6 months. He had also seen somebody in the UK, but was not given any report or anything that came close to that." The Appellant's reliance on the letter from Talk now has to be read in that context.

7. The letter itself is dated 5 October 2016 and therefore pre-dates the hearing by over two years. It reads as follows:

> "I have now completed a short course of CBT with [MC]. Sessions focussed on:
> 1. Understanding anxiety and low mood, including teaching [MC] some grounding techniques to use when he is experiencing high levels of anxiety/flashbacks
> 2. Understanding how negative thoughts and inactivity can cause moods to worsen
> 3. Using "worry time" at a specified time during the day, to allow himself to think and plan in connection with things that are bothering him, and then distract himself so that the worries do not become overwhelming.
>
> [MC]'s mood has shown improvement over time and in our final session I invited his aunt and uncle to join us as I felt the next step was for [MC] to gain some independence and knowledge of his local community and spend less time at home and I wanted to enlist their help in this, as from [MC]'s descriptions, they appeared

very protective. They agreed to help and seemed to take on board the importance of this for [MC]'s wellbeing.

[There is then a table showing that the Appellant's PHQ9 scores were 20 on 11 January 2016 but had reduced to 5 by 8 September 2016 and that in the same period his GAD7 scores had reduced from 17 to 9]

I have stressed to [MC] the importance of continuing to take his medication on a regular basis, as I feel this has had large part in his recovery so far, so I hope he will continue to keep in contact with you in this regard.
I have explained to [MC] that the next step is for him to start building a life for himself, as far as possible, within the restrictions of his refugee status and I enclose a copy of the letter I sent to him, listing community opportunities that may be helpful to him.
I am now discharging him but he may be re-referred in future, as appropriate."

8. In fairness to the Appellant I should also record that there are two further "medical letters" dating back to 2016 on file. I was not taken to those at the hearing, but I have considered them since to ensure that they do not affect my view as to the Appellant's vulnerability at the time of the hearing before the First-tier Tribunal. If those letters had altered the view which I expressed at the hearing, I would have called for written submissions from the parties before determining the appeal. but they did not for reasons I explain below.

9. The first of those letters is dated 21 July 2016, also written by Jane Floyd to the Appellant's GP. She says as follows:

"I have met with [MC] for sessions since our assessment on 1 June 2016.
His PHQ and GAD Scores are currently 10 and 15. There has been some improvement in his mood, largely, I think, due to antidepressant medication, so thank you for arranging this.
He is still complaining about headaches and painful eyes. If I understand correctly, he has seen an optician who has examined his eyes and suggested he may have raised cholesterol. I do not know if this is likely to cause eye pain, and weeping eyes but have suggested that he discuss this with you. His brother [I] is planning to contact the surgery to arrange an appointment.
There are a number of situations, including GP consultations, that make him anxious to the point of him wanting to avoid them. He says they remind him of the traumatic police interrogations he suffered in Turkey as a result of his Kurdish background. It may be that there are some matching triggers and he suffers flashbacks.
When I asked what would help him, he reported that he finds some questions overwhelming particular those relating to his family and living circumstances and he says he would find it easier if the questions obviously related to his physical ailments.
I thought I would make you aware of this so that you can understand some of his anxious thoughts and hopefully aid the effectiveness of your consultations with him."

10. The second of those letters is a recommendation by Ms Floyd in relation to organisations which the Appellant could approach including the Helen Bamber Organisation but also the Refugee Council and a learning centre to assist Turkish pupils of all ages with mathematics and English. That letter is dated 6 September 2016 and it is apparent from the tone of the letter that this was a letter discharging the Appellant from Ms Floyd's care (as is confirmed by the letter dated 5 October 2016).

11. It is worthy of note that, although those letters were sent to the Tribunal long after the dates thereof (on 24 April 2018), the Appellant's solicitors did not send the letter dated 5 October 2016. It appears that this latter letter was not thought relevant and was produced, probably during the hearing before Judge Paul, as there is no covering letter. I have already set out the content of that letter. It does not take matters very far particularly in terms of the Appellant's situation at the time of the hearing in December 2018. Neither that nor the other two letters provide a diagnosis of any current mental health condition nor indicate that the Appellant was subject to ongoing treatment for mental health concerns (certainly after 2016).

12. The Appellant did not claim to suffer from any such problems at the time of his screening and asylum interviews in 2014 although it does appear that he was referred to Helen Bamber Foundation in November 2014; they gave him an appointment in May 2016 so any concerns about his mental health were clearly not all that urgent. The Appellant mentions in his statement dated 19 April 2018 that he attended Helen Bamber Foundation but that, because he was living outside London, he was referred to TALK plus. He said he had been going there for psychiatric treatment for two years and was given medication to deal with anxiety and depression but does not say when he started that treatment. He says that TALK plus had "finalised a report" and he had asked for a copy which may be what prompted the production of the letters to which I have referred. There is no report other than as contained in the letters. The Appellant was legally represented at the hearing before Judge Paul. His representative made no submissions or request that he should be treated as vulnerable.

13. Moreover, as I have already observed, the Judge's findings turn largely on discrepancies between the Appellant's evidence and that of his brother, with particular focus on the evidence of the latter. I set those credibility findings out below but, as Mr Jarvis pointed out, the salient parts of the evidence on which the adverse credibility findings turn is recorded at [12] to [14] of the Decision as follows:

> "12. He [the Appellant] was then asked about the continuing harassment of his father. He was asked whether his father had been arrested, and then said he had been. He was then asked why he had not mentioned this before. The appellant said that his father had been arrested on several occasions, but nobody had asked him. His father was constantly under pressure, and regularly visited – as often as every 2-3 months. His mother had a heart attack and died because of the pressure. There were no documents available.

> 13. He was then asked about his screening interview and the fact that he had made no reference to military service. He then said that he was tortured at school and during his military service. The appellant was asked about his answer at B43, at the conclusion of his asylum interview record, and to provide any further matters. He explained that he had come to the UK because of the things he had experienced. He said that he was always oppressed in school, military service and daily life.
>
> 14. The appellant's brother then gave evidence and confirmed that the appellant had left in October 2014. He was then questioned as to whether his father had experienced any problems since his arrest, and said he had no knowledge of it. He was then asked about the alleged police visits, and said he had no knowledge. This witness said that the father had never mentioned any arrest or anything like that. He was then probed as to what in fact had happened to the family after his departure from Turkey, and said that he did not know."

14. Even if I had accepted that the further medical evidence on which the Appellant relied showed him to be vulnerable at the date of hearing or when his asylum interviews took place which, based on the evidence, I do not, the amended ground on which Ms Panagiotopoulou seeks to rely could not make any difference. If the Appellant were considered to be a vulnerable witness, he either would not give any evidence at all or that which he gave would be given little weight when it comes to credibility. However, there are no such concerns in relation to the Appellant's brother. His evidence is largely the reason why the Judge reached the finding he did about the Appellant's claim that his family continued to be targeted by the authorities on account of interest in either [IC] or the Appellant. [IC] said that he had not been told by his father of any visits by the authorities beyond the one which he said had followed immediately from his own departure from Turkey. He maintains regular contact with his father. As Mr Jarvis has pointed out, the Judge did not disbelieve that the Appellant may have been detained and ill-treated by the authorities in the course of general round-ups. What he did not accept was that the Appellant was individually targeted because of his own activities or those of his brother.

15. For those reasons, I refused the application to amend grounds and the hearing proceeded as originally envisaged.

PREVIOUS CREDIBILITY FINDINGS

16. I set out first the credibility findings of Judge Paul as those form the backdrop to the assessment of the guidance in IK. Those are at [19] to [25] of Judge Paul's decision as follows:

> "19. The burden is on the appellant to the relatively low standard, to show that there is a reasonable likelihood that he will be persecuted if he is returned to Turkey. The starting point has to be an assessment of the appellant's credibility. In this case, I was helped by the second respondent's decision letter, issued on 17 May 2018, which analysed the differences between the two accounts. At first blush, if both the appellant and his brother were claiming that they were the victims of persecution, then having regard to the fact that they came from the same family and

were living in the same area, one would be expect there to be an overlap between their respective experiences.

20. Alternatively, if the brother had been detained and tortured in February 2013, that might have caused the appellant to think carefully about whether it was safe for him to remain in Turkey either at that stage, or alternatively after his brother was detained again in September 2013. As was observed in the decision letter, it is clear that they have provided entirely different accounts. The second arrest of the appellant's brother was on 18 September 2013, and he made no mention of his brother (the appellant) experiencing any problems. On this occasion, the brother was detained for 3 days. However, the appellant then claimed that a second arrest occurred in March 2014 after distributing leaflets, which was 2-3 months later. He was detained for a relatively short period of time, although he claims he was tortured. By this time, his brother had left Turkey.

21. Against that family background, of consistent torture and harassment, the obvious question to be asked is why the appellant did not, at that stage, feel from Turkey. The next point is that the brother claimed that his parents' home was raided on 25 September 2013, but no reference was made to this by the appellant/s in the course of his application. Given the trauma that this involved because of the subsequent departure of his brother, it is incredible that it did not form part of the appellant's case.

22. The appellant's brother's evidence in relation to continuing interest in the family, was both evasive and therefore fundamentally unreliable. It is a striking feature of this case that the appellant claims that an arrest warrant has been issued for him, whereas no such warrant apparently was ever issued in relation to his brother when both left the country as a result of continuing harassment from the authorities.

23. The appellant knew when he was coming to this country that he was going to claim asylum. He knew from his brother (with whom he had obviously been in contact) the manner in which that would be done. Yet, at the point at which he had his screening interview, he made no reference to political persecution and simply referred to a land dispute and general ill-treatment In my view, the appellant would have been well aware of what was involved in making a claim for asylum, and for him to say that he was worried that he would be returned if he referred to political considerations at that stage, is entirely disingenuous.

24. It is important to have a holistic view of the appellant's case having regard to the unsubstantiated account in relation to his detention and torture. This is a family that claims to be part of a society which is the subject of regular harassment and ill-treatment. The family involvement in politics was undoubtedly developed as a result of round-the-table discussions. The lack of overlap between the appellant's and his brother's activity simply is not credible.

25. Furthermore, having regard to the very serious ill-treatment that the brother claimed to have received by September 2013, it is hard to understand why the appellant felt that he should remain in Turkey. In my view, the incident that he relies on of September 2014 – by which time he was forced to become an informer – is in my view not credible. The simple reason for that is that the authorities' interest in this family went as far back as February 2012 and therefore the family (if their claim was genuine) was the subject of obvious police interest from the authorities. Why would the authorities wait for over 2.5 years before requiring the appellant to become an informer? In my view, that simply is not credible, and has been relied upon as an explanation for why it was that that was the breaking point. In my view, the appellant's account lacks substance."

GUIDANCE IN IK

17. The error of law which I found by my Decision concerns the Judge's failure to have regard to the guidance in IK. That is not set out in a headnote as would be the position now. Instead one has to draw on the general conclusions at [133] of the decision read in the context of the remainder of the decision. I set out below the risk factors taken from IK as relied upon by the Appellant with the references to the part of the decision in IK from which those are taken:

    (a) Family connections with a separatist organisation ([14(f)]): The Appellant's brother [IC] was suspected of involvement with the PKK due to his association and support for the DTP and HDP (the successor parties to HADEP/DEHAP suspected of organic links to the PKK). It was accepted that he had been detained and ill-treated by the authorities as a result. [IC] has been accorded refugee status in the UK as a result of his claim based on that suspected involvement.

    (b) The Appellant's Kurdish ethnicity ([14(i)]

    (c) The Appellant's lack of a Turkish passport ([14(k)])

    (d) The Appellant is accepted to have been detained albeit not targeted by the authorities in the past; the Appellant says that such detention would be recorded by the authorities and would come to light during enquiries on return.

    (e) The Appellant originates from an area in the south-east of Turkey known for its support of the Kurdish cause.

18. I set out below the relevant passages of IK as identified above alongside those other risk factors which may also be relevant to my consideration of the issues. I have left out of account those factors which are not relied upon or not relevant to those relied upon. I also set out the general conclusions so far as potentially relevant. I deal with the other specific passages relied upon by the parties in the section dealing with their submissions which follows.

> "[14] On this basis, the Tribunal in **A (Turkey)** identified the potential risk factors to be taken into account. It concluded as follows.
>
> > "46. The following are the factors which inexhaustively we consider 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 a 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 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) indicate 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 to 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 DEHAP.
g) How long a period 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. It is a factor that is only likely to be of any particular relevance if there is a reasonably lengthy period between the two events without any ongoing problems being experienced on the part of the appellant from the authorities.
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) ….
k) Lack of a 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 or was asked to become one.
n) …..
o) …..
47. We cannot emphasise too strongly the importance of avoiding treating these factors as some kind of checklist. Assessment of the claim must be in the round bearing in mind the matters set out above as a consequence of a careful scrutiny and assessment of the evidence. The central issue as always is the question of the real risk on return of ill treatment amounting to persecution or breach of a person's Article 3 rights. The existing political and human rights context overall is also a matter of significance as will be seen from our assessment of the particular appeals in our determinations of those below. The particular circumstances that prevail today may not be in existence in 6 months time for all we know."

"Summary of Generic Conclusions

133. The following is a summary of our main conclusions in this determination.

1. The evidence of Mr Aydin (paragraph 32) accurately describes the defined and limited ambit of the computerised GBT system. It comprises only outstanding arrest warrants, previous arrests, restrictions on travel abroad, possible draft evasion, refusal to perform military service and tax arrears. "Arrests" as comprised in the GBTS require some court intervention, and must be distinguished from "detentions" by the security forces followed by release without charge. The GBTS is fairly widely accessible and is in particular

available to the border police at booths in Istanbul airport, and elsewhere in Turkey to the security forces.
2. …
3. ...
4. …
5. If a person is held for questioning either in the airport police station after arrival or subsequently elsewhere in Turkey and the situation justifies it, then some additional inquiry could be made of the authorities in his local area about him, where more extensive records may be kept either manually or on computer. Also, if the circumstances so justify, an enquiry could be made of the anti terror police or MIT to see if an individual is of material interest to them.
6. If there is a material entry in the GBTS or in the border control information, or if a returnee is travelling on a one-way emergency travel document, then there is a reasonable likelihood that he will be identifiable as a failed asylum seeker and could be sent to the airport police station for further investigation.
7. It will be for an Adjudicator in each case to assess what questions are likely to be asked during such investigation and how a returnee would respond without being required to lie. The ambit of the likely questioning depends upon the circumstances of each case.
8. The escalation of the violence following the ending of the PKK ceasefire reinforces our view that the risk to a Kurdish returnee of ill treatment by the authorities may be greater if his home area is in an area of conflict in Turkey than it would be elsewhere, for the reasons described in paragraphs 90 and 116.
9. The Turkish Government is taking action in legislative and structural terms to address the human rights problems that present a serious obstacle to its membership of the EU. It has made its zero tolerance policy towards torture clear. However the use of torture is long and deep-seated in the security forces and it will take time and continued and determined effort to bring it under control in practice. It is premature to conclude that the long established view of the Tribunal concerning the potential risk of torture in detention as per A (Turkey) requires material revision on the present evidence. However the situation will require review as further evidence becomes available. For the time being as in the past, each case must be assessed on its own merits from the individual's own history and the relevant risk factors as described in paragraph 46 of A (Turkey).
10. Many of the individual risk factors described in A (Turkey) comprise in themselves a broad spectrum of variable potential risk that requires careful evaluation on the specific facts of each appeal as a whole. The factors described in A (Turkey) were not intended as a simplistic checklist and should not be used as such.
11. A young, fit, unmarried person, leaving his home area and seeking unofficial employment in a big city, may not feel the need to register with the local Mukhtar, at least at the outset. Many do not. However, given the range of basic activities for which a certificate of residence is needed, and which depend upon such registration, we conclude that it would in most normal circumstances be unduly harsh to expect a person to live without appropriate registration for any material time, as a requirement for avoiding persecution. This does not necessarily preclude the viability of internal relocation for the reasons described in paragraph 133.13 below.

> 12. The proper course in assessing the risk for a returnee is normally to decide first whether he has a well founded fear of persecution in his home area based upon a case sensitive assessment of the facts in the context of an analysis of the risk factors described in A (Turkey). If he does not then he is unlikely to be at any real risk anywhere in Turkey.
> 13. The risk to a specific individual in most circumstances will be at its highest in his home area for a variety of reasons, and particularly if it is located in the areas of conflict in the south and east of Turkey. Conversely the differential nature of the risk outside that area may be sufficient to mean that the individual would not be at real risk of persecution by the state or its agencies elsewhere in Turkey, even if they were made aware of the thrust of the information maintained in his home area by telephone or fax enquiry from the airport police station or elsewhere, or by a transfer of at least some of the information to a new home area on registration with the local Mukhtar there. Internal relocation may well therefore be viable, notwithstanding the need for registration in the new area. The issue is whether any individual's material history would be reasonably likely to lead to persecution outside his home area."

SUBMISSIONS AND OTHER BACKGROUND EVIDENCE

19. Ms Panagiotopoulou relied on her skeleton argument and the extracts from IK which I have set out above. She relies also on a deterioration in the situation for Kurds in Turkey as set out in the report of the Immigration and Refugee Board of Canada entitled "Turkey: The situation and treatment of Kurds and Alevis after the coup attempt in July 2016, including in the large cities (July 2016-January 2017)" ("the IRB Report"). She referred me to the following extracts in particular:

> "According to the Associate Professor at the University of Binghampton, the decrees were used against FETO and Kurdish political groups, both identified as a threat to national security (16 Jan. 2017). Similarly, in its 2016 report, the European Commission states "[t]he crackdown has continued since [the attempted coup] and has been broadened to pro-Kurdish and other opposition voices" (9 November 2016) …a research associate at the University of Coventry …whose fields of research include the Kurdish issue, stated that the Kurdish population seems to suffer disproportionally from the effects caused by the laws and decrees associated to the state of emergency …The Associate Professor at the University of Birmingham stated the following regarding the change in the treatment of Kurds since the coup attempt in 2016:
>
> > [T]he situation has worsened in Turkey for Kurds. Under the [state of emergency], the executive orders make it easy to arrest Kurds and put them into jail without due process. The prosecutors can keep arrested people up to a month without a lawyer. Furthermore, the current permissive political environment increased intolerance against Kurds in the country…The executive orders targeted Kurds;…"

Her skeleton argument also contains references to other background evidence which points to a deterioration in the conflict between the Turkish authorities and the PKK following the breakdown of the ceasefire and particularly

following the coup. The increased targeting of Kurds following the coup is also borne out by the Home Office's own Country Policy and Information Note entitled "Turkey: Kurds" dated September 2018 (see in particular [2.4.4], [4.3.2] and [4.3.3], and [4.4.3] to [4.4.4]).

20. Ms Panagiotopoulou also referred me to [126] of IK 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."

Ms Panagiotopoulou submitted that in circumstances where there is a heightened interest in pro-Kurdish groups, the interest in "filling the time gap" would also be heightened.

21. Ms Panagiotopoulou did not seek to suggest that Kurdish ethnicity alone would suffice to show a real risk on this basis but pointed to the cumulative factors in this case as being the Appellant's ethnicity, his area of origin, the profile of his brother and his brother's detention in 2012/13 because of his involvement with the DTP/HDP at that time and suspicion of PKK involvement and the Appellant's own previous detentions. She said that the Appellant's brother's detentions in particular would be recorded and would come to the authorities' interest during enquiries.

22. The way the Appellant's case is put as to risk is that, on return, he would be stopped at the airport as he is undocumented. He would be asked why and would have to volunteer information about his asylum claim. The fact that this was not believed is not relevant to the Turkish authorities. It would be perceived as genuine by the Turkish authorities because the Appellant is a Kurd and because of his brother's position. He would then be investigated further

and is likely to be detained for a long period and transferred to the terrorist police which gives risk to a risk of persecution and/or treatment contrary to Article 3 ECHR.

23. Mr Jarvis accepted that there was what he described as a "loose end" in terms of a negative credibility finding in relation to ongoing interest in the Appellant's family. He asked me to determine that against the Appellant. If there were such interest, the Appellant's brother would surely know of it as he has maintained regular contact with the family. The Appellant was disbelieved in relation to individual targeting of him and that rejection is maintained.

24. Mr Jarvis accepted that the guidance in IK continues to apply. He accepted that the Appellant would be asked questions about why he was in possession of a travel document. He could not be expected to lie. If he told the truth that would be that he had claimed asylum on the basis that there was adverse interest in him by the authorities which claim had been rejected but that it was accepted that he had been detained as part of general round-ups but released without charge. Mr Jarvis relied in particular on the possibility of internal relocation as set out at [116] to [119] of IK:

> **"Is there an internal relocation option for a person who is at real risk of persecution by the authorities in his or her home area?**
>
> 116. We have already touched upon this issue in some of our previous observations. We have indicated that the proper course in assessing risk on return is normally to decide first whether an individual has a well founded fear of persecution in his home area based upon a case sensitive assessment of the facts in the context of an analysis of the risk factors described in **A (Turkey)**. It is however implicit in our conclusions so far that the risk to a specific individual in most circumstances will be at its highest in his home area for a variety of reasons, and particularly if it is located in the areas of conflict in the south and east of Turkey. Conversely the differential nature of the risk outside that area may be sufficient to mean that the individual would not be at real risk of persecution by the state or its agencies elsewhere in Turkey, even if they were made aware of the thrust of the information maintained in his home area by telephone or fax enquiry from the airport police station or elsewhere, or by a transfer of at least some of the information to a new home area on registration with the local Mukhtar there.
>
> 117. Some information about an individual is not reasonably likely to be apparent to anyone other than a few individuals in his home area. For example, a specific gendarme might have it in for an individual whom he considers to be a local "ne'er-do-well" but against whom there is no specific information. Also it is implausible, in the current climate of zero tolerance for torture that an official would wish to record or transfer information that could potentially lead to his prosecution for a criminal offence.
>
> 118. In general terms however we consider that one should proceed, when assessing the viability of internal relocation, on the basis that an individual's material history will in broad terms become known to the authorities at the airport and in his new area when he settles, either through registration with the local Mukhtar or if he comes to the attention for any reason of the police

there. The issue is whether that record would be reasonably likely to lead to persecution outside his home area.

119. We have already identified some examples of the circumstances in which a person may have experienced serious ill-treatment in the past in areas of Turkey where the PKK was or now is active, but would not necessarily be at similar risk of such treatment elsewhere in Turkey where it is not, and where a different view of his history could be taken. They include examples of general intimidation by the authorities of the Kurdish population to discourage support for the PKK, or to clear whole villages. The evidence is that anything between some hundreds of thousands to some millions (depending on whose figures one uses) may have been displaced within Turkey as a consequence of this. However outside the areas of PKK activity there will not be the same perceived need to undertake such intimidation or clearances and the authorities within the receiving areas will be aware of the tactics that led to this mass migration, and will be able to assess an individual's record in the light of it. Similarly, a person who was included on Mr Dil's list of local "ne'er-do-wells", against whom there was no evidence of PKK involvement, but who ran the risk of being detained for questioning whenever an PKK incident occurred in his vicinity, would not be at a similar risk in another area where the PKK was not active and where such incidents were much less likely to occur. These are just some examples of why differential risk can arise in different areas of Turkey."

25. In relation to the differential risk, Ms Panagiotopoulou submitted that [119] of IK has to be read alongside [120] which reads as follows:

> "In saying this, we have full regard, as invited by Mr Grieves, to the current guidance of UNHCR, which, so far as we have been informed, does not appear to have changed since the publication of its last official general report in May 2001. Nothing we have said is in our view in any material contradiction to this guidance. It states
>
> > "Kurds and members of Christian minorities from the southeast Turkey do have an internal flight alternative outside the region……. unless the case in question is of a prominent nature or is perceived by the authorities to have real or alleged linked with the PKK or other main Kurdish parties. UNHCR considers that the group most likely to be exposed to harassment/prosecution/persecution are Kurds suspected of being connected with or sympathisers of the PKK….
> > In the context of internal flight "it is essential to find out if Turkish asylum seekers if returned would be suspected of connection to or sympathy with the PKK. In this case they should not be considered as having been able to avail themselves of an internal flight alternative"…
> > in the UNHCR's perspective, if persecution emanates from state authorities then there is no internal flight alternative or relocation. The situation may look different with regard to village guards or people persecuted by non-state agents."

She submitted that, read in context, the differential risk arises only if a person has no risk factors other than previous detentions during round-ups.

26. The Respondent accepts that IK is not out of date. Mr Jarvis also accepted that the IRB Report indicates a heightened interest in pro-Kurdish groups. However, what is there said still relies on there being a differential interest in the individual. He accepts that a transfer to the terrorist police would be sufficient for there to be a real risk, but the question remains whether that is likely to occur. That would depend on PKK association or being at the high end of political involvement. The Appellant has not been individually targeted in the past and although there would be records of his previous detentions that would not be enough, even coupled with the Appellant's ethnicity, to give rise to a real risk.

27. Mr Jarvis drew my attention to the Home Office Country Policy and Information Note entitled "Turkey: Kurdish political parties" dated August 2018 ("the August 2018 CPIN"). At [2.4.1] the following comment is made about HDP involvement:

> "The HDP and the PKK are separate organisations with different goals. The HDP denies direct links with the PKK. However, some members of the HDP have been accused by the Turkish government of links with the PKK. There are reports that government treatment of HDP supporters tends to vary according to developments in the conflict with the PKK"

28. The Respondent's general policy position concerning risk based on support of the HDP is set out at [2.4.14] as follows:

> "In general, the risk faced by a member or supporter of the HDP will depend on the person's profile and activities. When ordinary members of the HDP have come to the adverse attention of the authorities, this has generally been whilst participating in demonstrations and rallies; an ordinary member would not generally attract the adverse attention of the authorities on account of their political beliefs. It will be up to a person to demonstrate that their appearance and participation at a demonstration or rally will have brought them to the adverse attention of the authorities such that they would experience serious harm or persecution on return."

29. Mr Jarvis pointed out that IK is not authority for the proposition that family association alone is sufficient to make out a claim for protection. He referred in particular to [129] of IK relying on the factors in IK's own case which was stronger. Paragraphs [130] and [131] are also pertinent to the submission he makes:

> "129. We consider this to be a marginal case and it may be that we would have adopted a different conclusion ourselves. We however accept that the Adjudicator did, in the course of her determination, reach findings of fact that reveal a number of potential risk factors, and she reached her overall conclusion to allow the appeal in the context of those findings. She was assisted in her conclusions by hearing oral evidence both from the Respondent and from one of his relatives, which we have not. The relevant risk factors supporting the Adjudicator's conclusion in favour of the Respondent can be summarised as:
>
> 1. He is an Alevi Kurd from Karamanmaris, within the area of conflict.

2. He and his immediate family did provide food for the PKK.
3. He experienced a detention, with others, in 1997, during which in a police station he suffered serious torture over several days and was questioned about involvement with the PKK.
4. He was again detained, with others, in December 1997 and questioned about his uncle and was told to give information about his whereabouts.
5. Two cousins from his village had received life sentences in 1995 as PKK fighters, which may have focused the authorities' adverse attention on the Respondent's family and village.
6. Other family members in the village also experienced difficulties with the authorities. The village was subject to an order to evacuate which some villagers, including a number of members of the Respondent's family, resisted.
7. His disappearance from the village without trace would raise questions about what he did thereafter, especially in the period between December 1997 and his coming to the UK in 2001, and enhance suspicions of a PKK connection.
8. He is a draft evader.

130. Having said that, we also note that the Respondent's only two detentions occurred within the ambit of a clearance decision in respect of his village. He was not personally specifically targeted for questioning but was taken along with all the males/young men in the village. The first detention was in a police station and he and the others were all questioned about PKK involvement and denied it. The second "detention" was unofficial in that it did not occur within a police station but in the mountains and was brief. It was intimidatory, especially within the context of the curfew being imposed on the village, as revealed by the press reports at the time. The Respondent was questioned about the whereabouts of his uncle. There is no evidence that the authorities had any specific information linking the Respondent personally to the PKK as a consequence of his own actions. There was no indication prior to the events of late 1997 that he personally suffered any material difficulties as a consequence of the arrest and conviction of his two cousins. The Respondent was then able, after leaving the village, to live in Istanbul for four years without difficulties albeit under a false name. No doubt some inquiries were made about him in his village when he first left, as they would have been made of any young man who left the village in southeast Turkey without registering elsewhere. However there is no evidence that he was actually sought by the authorities, other than as a draft evader. It was the military, who came for him in Istanbul and for conscription. It was not the police, seeking him for any other purpose, though by this time his identity and whereabouts were known to the authorities. He left Istanbul because he did not wish to be taken for conscription. He has had no political involvement in the UK. Any risk to him would be greater in his home area in Karamanmaris, where he and his family would be seen as troublemakers.

131. This alternative view of the evidence is why we consider this to be a marginal case. However we accept that the Adjudicator was entitled to take the view she did on the evidence and to conclude there would be a real risk on return of material ill-treatment, both in his home area and elsewhere, including the airport on arrival. The possibility that we might have taken a different view does not render her determination unsustainable within the terms of Subesh."

30. Mr Jarvis submitted that the main factor on which this case turns is the position of the Appellant's brother. The Turkish authorities may be aware that he is in the

UK as a refugee. However, there is an absence of targeting of the Appellant and the evidence does not point to a targeting of the family due to that association. The Appellant had not therefore established that he would be of particular interest in Turkey outside his local area.

THE CASE OF THE APPELLANT'S BROTHER

31. In light of the importance which both parties accept arises from the case of the Appellant's brother [IC], it is necessary to say a little more about that case. The Respondent was ordered by Judge Paul to provide the documentation relating to his position.

32. As I have already noted, [IC] was accorded refugee status. His claim was accepted by the Respondent and therefore there is no appeal decision making findings about his claim nor is it evident from the documents what of the claim was accepted in granting him asylum. I therefore have regard to his case as set out in his screening and asylum interviews. However, following a direction by Judge Paul, the Respondent also produced a supplementary letter dated 16 May 2018 which explains the differences between the Appellant's case and that of [IC] and therefore casts some light on why the Respondent granted him asylum.

33. First, [IC] says that he was mistreated during his military service. He claims to have been shot by his commanding officer because he was a Kurd. Although the Respondent says in the 16 May letter that the Appellant does not claim to have carried out military service, this assertion is undermined by his subsequent witness statement dated 25 September 2018. He claims to have been insulted, asked "to do all the dirty chores" and was beaten for no reason but he does not claim that he was ill-treated to the same extent as his brother. In any event, [IC] said himself during his asylum interview that he was not relying on this as the basis of his fear of return as it was small in comparison with what followed.

34. Second, [IC] says that he was harassed by the authorities because of his political activities and views. He did not admit to being involved with the PKK – he said he was against violence – but says that the authorities nonetheless suspected him of PKK support. His own activities were as a supporter of the parties with which he was involved, distributing leaflets and sticking up posters. The core of [IC]'s claim which was, according to the letter dated 16 May 2018, apparently accepted, is that he was arrested and detained on two occasions on this account during which time he was interrogated and tortured. The first occasion was following a demonstration on 17 February 2012 to 18 February 2012. The second time, he was detained on arrest at his parents' home (in other words individually targeted) on 18 September 2013 and released on 20 September 2013. Following his release, he left the family home and went to stay with friends before coming to the UK. He also claimed that, immediately following his departure from his parents' home, his father and brother were detained on 25 September 2013, but I have already observed that this was not accepted by Judge Paul as the Appellant had not mentioned this and [IC] was not present.

DISCUSSION AND CONCLUSIONS

35. As indicated at [47] of IK, the risk factors in this case cannot be considered as a checklist; the factors must be assessed holistically. Notwithstanding the deterioration in the situation for Kurds following the coup in Turkey, neither Kurdish ethnicity nor area of origin taken alone would be sufficient to establish a real risk of ill-treatment or discrimination reaching the threshold of persecution on return.

36. Neither do I accept that the detentions of the Appellant in the past due to round-ups would be sufficient either taken alone or with his ethnicity and area of origin to establish such a risk. The Turkish authorities may well become aware of those detentions during enquiries which would be made on questioning the Appellant about his return on an emergency travel document. However, having adopted the findings of Judge Paul for the reasons I have already given, those detentions were not based on any individual targeting of the Appellant for suspicion of his own activities.

37. I accept Mr Jarvis' submission that I should find that there is no suspected association of the family generally with the PKK which would have led to any targeting of the Appellant. I have already referred to the Appellant's claims that his father has been detained and questioned on a number of occasions. I note that the Appellant's father is Turkish. The Kurdish ethnicity stems from the Appellant's mother's side. That does not necessarily mean that the Appellant's father would fall above suspicion. He is after all married to a woman of Kurdish ethnicity. However, due to the discrepancies in the evidence about the interest in the family since [IC]'s departure from Turkey, I do not accept as true that the authorities in the Appellant's local area have continued to target the family either in search of [IC] or due to any interest in the Appellant or his father.

38. However, I accept that the crux of this case is the interest in [IC] which might be shown once the Appellant's link with him is discovered. I have not accepted that the Appellant was targeted because of that link in his home area immediately following [IC]'s departure. However, the background evidence to which I was taken shows heightened interest in those associated with pro-Kurdish groups and family association was one factor which might give rise to a risk of increased interest on return even before the coup (see reference to [14:46(f)] of IK cited at [17] above).

39. As I have already noted, therefore, it is likely that, during questioning of the Appellant at the airport on return, the authorities would become aware of the Appellant's links with [IC]. Whilst [IC] himself says that he was not a PKK supporter or involved in its activities, it is nonetheless the case that the authorities believed that he was. That coupled with information which might well come to light about the previous detentions of the Appellant, even though those were not based on any individualised suspicion of PKK involvement,

would be sufficient to increase the interest in the Appellant. If he were asked about his asylum claim in the UK, I accept that he would say that it had not been believed. However, I also accept Ms Panagiotopoulou's submission that whether the UK accepted the claim is unlikely to be of relevance to the Turkish authorities. Their interest is in the possible involvement of the Appellant with the PKK or other pro-Kurdish groups not whether the UK has accepted he was. I accept of course that the Appellant does not say he was involved with nor even supported the PKK, but the issue is how the authorities will perceive him.

40. For those reasons, which arise principally from the Appellant's Kurdish ethnicity, coupled with the position in relation to [IC], I am persuaded by Ms Panagiotopoulou's submission that the Appellant is likely to be transferred to the terrorist police for further investigation which, as Mr Jarvis accepted, is sufficient to give rise to a real risk of ill-treatment.

41. For those reasons, I find that the Appellant has a well-founded fear of persecution on return to Turkey and that he is at real risk of ill-treatment contrary to Article 3 ECHR. Accordingly, his appeal succeeds.

DECISION

The Appellant's appeal is allowed on protection and human rights grounds

Signed Dated: 25 June 2019

Upper Tribunal Judge Smith

APPENDIX: ERROR OF LAW DECISION

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03476/2018

THE IMMIGRATION ACTS

Heard at Field House
On Tuesday 12 March 2019

Determination Promulgated

……**18/03/2019**….

Before

UPPER TRIBUNAL JUDGE SMITH

Between

M C
[ANONYMITY DIRECTION MADE]

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Scott, Counsel instructed by Montague Solicitors, LLP
For the Respondent: Mr S Kandola, Senior Home Office Presenting Officer

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
An anonymity direction was not made by the First-tier Tribunal. However, as the Appellant claims that he would be at risk in his home country it is appropriate to make that direction. 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, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

ERROR OF LAW DECISION AND DIRECTIONS

BACKGROUND

1. The Appellant appeals against a decision of First-tier Tribunal Judge N M Paul promulgated on 11 January 2019 ("the Decision") dismissing the Appellant's appeal against the Respondent's decision dated 23 January 201 refusing his protection and human rights claims.

2. The Appellant is a national of Turkey of Kurdish background. He claims to be at risk due to that background and both his own links and those of his family with the PKK and HDP. He claims to have been detained and ill-treated on three occasions for political reasons, on 2 January 2013, 25 March 2014 and 30 September 2014. He also claims that his family has been involved in a land dispute with another, Turkish family.

3. The Appellant claims to have arrived in the UK on 20 October 2014 clandestinely and claimed asylum on 21 October 2014. He says that he left Turkey on 2 October 2014. The other relevant factor is the position of his brother, [IC], who came to the UK in 2013 and has since been recognised as a refugee.

4. The Respondent rejected the Appellant's claim as not credible. The Respondent accepted that the Appellant is Turkish and did not reject the claim that he is of Kurdish background. However, none of the other aspects of the claim were accepted. By a supplementary letter dated 16 May 2018, the Respondent also reconsidered the asylum claim following the grant of status to the Appellant's brother. I will need to deal with that letter below.

5. The Judge rejected the Appellant's case as not credible. He accepted that the position of Kurds in Eastern Turkey was "particularly problematic". He accepted that the Appellant may have faced discrimination for that reason. He accepted that he may have been detained as part of a round-up but did not accept that he was specifically targeted. He did not accept that the Appellant should be recognised as a refugee based on his brother's status.

6. There are effectively two main grounds of appeal. The first concerns the position of [IC] and the impact of the grant of refugee status to him on the Appellant's case. The second concerns the Judge's failure to refer to extant country guidance relevant to the appeal, namely IK (Returnees – Records – IFA) Turkey CG [2004] UKIAT 00312 ("IK"). There are some additional subsidiary issues raised which I deal with below.

7. Permission to appeal was granted by First-tier Tribunal Judge Parkes in the following terms so far as relevant:

> "..[2] The Judge found the Appellant's account was not credible for the reasons given in paragraphs 19 to 26 of the decision.
> [3] The grounds argue that the Judge did not engage with the facts of the Appellant's case and that the family's political involvement was not considered and did not consider that the Appellant's home must have been under surveillance. The Judge did not refer to IK and did not analyse the risk factors involved.
> [4] The Judge was entitled to have regard to events that the Appellant did not raise which might have been expected and to have attached weight to that in the credibility assessment. However the fact that the Appellant's brother has been granted refugee status is relevant and the failure to consider IK is an issue. The grounds are arguable.
> [5] The grounds disclose an arguable error of law and permission to appeal is granted."

8. The appeal comes before me to determine whether there is a material error of law in the Decision and if so either to re-make the decision or to remit to the First-tier Tribunal to do so.

DISCUSSION AND CONCLUSIONS

9. I begin with one short point arising from [6] of the Appellant's grounds which Mr Scott submitted disclosed a fundamental factual misunderstanding on the part of the Judge. That concerns what is said at [22] of the Decision as follows:

> "[22] The appellant's brother's evidence in relation to continuing interest in the family, was both evasive and therefore fundamentally unreliable. It is a striking feature of this case that the appellant claims that an arrest warrant has been issued for him, whereas no such warrant apparently was ever issued in relation to his brother when both left the country as a result of continuing harassment from the authorities."

10. Mr Scott drew my attention to questions [88] and [89] of the Appellant's asylum interview record on which this finding is predicated. Those read as follows:

> "[Q88] Have they experienced any problems since he left?
> [A] When I call them 3 days ago. They came here. They asked for you. They have a warrant for you.
> [Q89] Have you seen a copy of warrant?
> [A] They did not leave any papers. Just asked for me."

11. Paragraph [6] of the grounds says that "[i]t was impressed upon the Tribunal that this was a further attempt by the Turkish authorities to intimidate the family and that no arrest warrant existed. The Appellant had consistently stated that the authorities did not leave documents at the family house."

12. First, I note that the way in which Mr Scott put the submission to me was not based on the Judge having misunderstood the Appellant's case because the warrant did not exist. Even if, as the grounds suggest, this was the way in which the Appellant's case was presented to Judge Oliver, it is not based on what the

Appellant said at interview. He said that his family was told there was a warrant. He did not say that the family did not believe that to be the case.

13. Second, the evidence of the Appellant is that a copy of the warrant was not left with his family. However, that is not inconsistent with the Judge's finding that there was a warrant and that it would be unusual if one were issued against the Appellant but not the Appellant's brother who was accepted to have been of interest to the authorities.

14. I turn then to the main complaint in this regard which concerns the Judge's analysis of the Appellant's case in light of the recognition of his brother as a refugee. I did not understand Mr Scott to submit that the Judge was bound to allow the appeal on this basis. It is well-recognised that asylum claims turn on their own facts and have to be considered in that light. Neither party referred me to relevant case law on this issue, but it is to be found in the judgments of the Court of Appeal in Ocampo v Secretary of State for the Home Department [2006] EWCA Civ 1276 and AA and another v Secretary of State for the Home Department [2007] EWCA Civ 1040. Both judgments uphold the principle that two different Tribunals may legitimately reach divergent views even where there is an overlap of facts between two cases.

15. What is said in the grounds about the impact of the Appellant's brother's case is that the Judge erred because he adopted the Respondent's approach. That was to say that, because [IC] had left Turkey earlier and the incidents leading him and the Appellant to depart did not overlap, it damaged the Appellant's credibility as to his reasons for leaving. The Appellant says that "[t]he difficulty in taking this approach is that both accounts differed". In other words, what the Appellant appears to say is that the facts leading to his brother's case were not relied upon as giving rise to the risk to him. However, if that is so it is difficult to see why the Appellant relied so heavily on his brother's case and why he relied on evidence from his brother to support his own case.

16. Mr Scott submitted that the Judge was not entitled to rely on inconsistencies between the Appellant's case and that of his brother because the Respondent had accepted that [IC]'s account did not undermine the Appellant's case. He relied in that regard on the Respondent's supplementary letter dated 16 May 2018. Mr Kandola was able to supply a copy of that letter. The passage relied upon by Mr Scott is as follows:

> "Due to the significant differences in their accounts, [IC]'s account does little to support [the Appellant's] asylum claim. As the two account are clearly different, it is not unreasonable to issue both brothers with contrasting outcomes, as for the reasons given above, it is not considered that [IC]'s account undermines the account of his brother [MC]."

17. As will be evident, it is in reality only the last part of the last sentence which could in any way support the Appellant's case. As Mr Kandola pointed out, that part of the sentence is badly phrased particularly taken in the context of the first part

of the paragraph which refers to the significant differences and the remainder of the letter which focusses on the inconsistencies. As Mr Kandola submits and I accept to be the case, the writer probably meant to refer to the parties the other way round; in other words to say that the Appellant's account did not undermine that of his brother. Otherwise, as Mr Kandola submitted, the Respondent would have to consider revoking [IC]'s refugee status on the basis that he was not entitled to it. The way in which the Respondent put the case in this regard at the hearing as set out at [16] and [17] of the Decision is consistent with that interpretation and is obviously the way in which the Judge understood the Respondent's case.

18. The Judge considered the impact of the Appellant's brother's case on his own at [19] to [24] of the Decision. I do not need to set those paragraphs out save to observe that the Judge's starting point at [19] was that "if both the appellant and his brother were claiming that they were victims of persecution then having regard to the fact that they came from the same family and were living in the same area, one would expect there to be an overlap between their respective experiences". What follows is not simply an analysis of where those accounts differed but also a reliance on the Appellant's case having changed from his screening interview to the asylum interview and his failure to explain inconsistencies. It was for that reason that the Judge said as he did at [24] of the Decision that he considered the development of the Appellant's case to be based on the Appellant's opportunity to consult with his brother about his claim. That is the subject of separate complaint in the grounds but is justified by the reasons given.

19. For those reasons, I do not consider there is any error of law made by the Judge in considering the core of the Appellant's claim. He was entitled to find the Appellant not to be credible for the reasons he gave. Those findings have to be considered alongside what the Judge records about the evidence at [9] to [14] of the Decision.

20. I accept however as did Mr Kandola that there are some unfortunate failings to make express findings on certain aspects of the claim, for example, whether the Appellant was detained on any occasion even if not targeted as such. That leads into the second of the Appellant's main grounds concerning the Judge's failure to consider IK. The passage of IK on which the Appellant relies is [14] which itself cites from A (Turkey) at [46] and [47]. I do not set out those paragraphs because the grounds appear to accept that not all of the factors which form the guidance in that case apply. The Appellant says at [9] of his grounds that the Judge has failed to have regard to the following factors:

> "(i) Family connections with the HDP and links to the PKK.
> (ii) Kurdish ethnicity.
> (iii) Accepted that the Appellant was ill treated
> (iv) Lack of a current Turkish passport.

(v) The family emanate from the south east of Turkey where the separatist conflict has generally been at its most acute.
(vi) Asked to become an informer.
(vii) His brother being recognised as a refugee."

21. I have already dealt with (vii) which overlaps with the first ground. The Judge considered that issue. I can also deal shortly with (vi) because the Judge rejected the Appellant's claim in that regard at [25] of the Decision. There is no express finding that the Appellant's family have HDP and PKK links. Indeed, that is part of the claim which the Judge rejects as fabricated by discussions between the Appellant and his brother at [24] of the Decision. I also note that the Appellant's brother said he had no knowledge of his father experiencing any problems whereas the Appellant said that their father was arrested several times, constantly under pressure and regularly visited.

22. The Judge deals with the more general aspects of the Appellant's case at [26] of the Decision as follows:

> "I have regard to the fact that the position of Kurds in Eastern Turkey is particularly problematic. However, I have to analyse the evidence as carefully as I can, and in particular take into account that the appellant appeared to be originally saying and indeed he did also at the end of this asylum interview that there were a variety of factors that gave rise to his decision to leave. He undoubtedly did from time to time experience discrimination as a Kurd. He may have been detained and/or ill-treated by the authorities at some stage as part of a routine round-up which the Turkish authorities are clearly perfectly capable of. However, that is in some way short of having been targeted to the extent that he claimed by 2014 such that he was then compelled to leave in fear of his life. I reject that account."

23. That paragraph considers the general position for Kurds coming from the area of Turkey from where the Appellant emanates. I do not read the finding that the Appellant "may" have been ill-treated as being a particular risk factor in accordance with IK because, even if that amounts to an acceptance of detention and ill-treatment, it is not an acceptance of individual targeting.

24. I am however concerned about the failure to consider risk to the Appellant due to his illegal departure and the fact that he does not have a passport. As Mr Scott submitted, he would therefore be returned on an emergency travel document which would bring him to the attention of the authorities. He would then be questioned about his background. He could not be expected to lie. Whilst his own claim has not been found to be credible and the truth would therefore be that he has no involvement of his own in political activities, he would have to disclose, if asked, his relationship with his brother and where his brother is now. That might conceivably give rise to a risk.

25. For that reason, I do not accept Mr Kandola's submission that the Judge's failure to have regard to IK (which he accepted was the position) was not material.

26. I accept therefore that the Appellant has established that the Decision contains an error of law arising from the Judge's failure to have regard to IK. However, for the reasons given, I do not accept that there is any error of law in relation to the Judge's credibility findings as appear at [19] to [25] of the Decision. I therefore preserve those findings. I set aside the remainder of the Decision and in particular [26] which concerns the general risk to the Appellant as a Kurd. That general risk coupled with such risk factors as still arise notwithstanding the adverse credibility findings will need to be reconsidered in light of the guidance in IK. There was no application by the Appellant to adduce any further evidence. Accordingly, I have given a direction only for re-listing of the appeal for a resumed hearing on the issue which remains.

DECISION

The First-tier Tribunal Decision involves the making of a material error on a point of law at [26] of the Decision. I therefore set aside the First-tier Tribunal Decision of Judge N M Paul promulgated on 11 January 2019. However, I preserve the findings made at [19] to [25] of that decision. I make the following directions for the re-making of the decision.

DIRECTIONS

The appeal is to be re-listed for hearing on the first available date after Monday 1 April 2019. Time estimate is half a day.

Signed Dated: 15 March 2019
Upper Tribunal Judge Smith