IAC-AH-KRL-V1

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/08347/2019**

THE IMMIGRATION ACTS

Heard at Field House
On 9 April 2021

Decision & Reasons Promulgated
On 28 May 2021

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

K T
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms E Daykin, Stuart & Co Solicitors
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals against the decision of the Secretary of State made on 21 August 2019 to refuse his asylum and protection claim. His appeal against that decision was dismissed by First-tier Tribunal Judge Bonavero in a decision promulgated on 28 October 2019. For the reasons set out in the decision of Upper Tribunal Judge Gill promulgated on 15 October 2020, that decision was set aside. Judge Gill found that the First-tier Tribunal had given inadequate reasons for the adverse credibility assessment but found that the grounds had not established that

the First-tier Tribunal erred in concluding that the appellant's Article 8 family and private life claims fell to be dismissed. This appeal is therefore limited to remaking the asylum claim, humanitarian protection claim and related Article 3 claim.

The Appellant's Case

2. The appellant was born in 1992 and is a citizen of Turkey of Kurdish ethnicity. The appellant was born in Sakçagözü, Nurdağı, Gaziantep. He graduated from Nurdağı Lise in June 2009 and then started to work as a farmer to help his parents. The Turkish Gendarme came to the village regularly, making accusations that the villagers supported the PKK.

3. The appellant had joined the HDP in 2013 and helped with activities after that. He was involved in election campaigning in 2015 and in a Constitution referendum in April 2017.

4. On 27 July 2017 the appellant was arrested by an antiterror team who alleged that he had participated in the PKK and that he had published PKK related propaganda. He was detained, ill-treated and questioned. His mobile phone was taken and it was discovered that he had made social media postings relating to the HDP which led to accusations of being a participant in the PKK. He denied that but was released on 29 July 2017 owing to a lack of evidential information relating to the allegation.

5. The appellant was arrested again on 20 March 2018 and was accused of participating again in similar activities. He said that he had only participated in Newroz. He was again tortured and was told that he would be released if he supplied the police with information. He accepted the offer having no alternative and he was ordered to report to the police station in Nurdagi every Thursday to give over information, it being said to him that if he did not accept their deal he would be arrested. He was forced to sign a blank paper before being released on 22 March 2018.

6. The appellant's brother Ali was also released and tortured but he was not asked to supply information. The appellant's father obtained medication from the local pharmacy on his behalf to treat his bruising and swellings.

7. He decided that he would have to leave Turkey and travelled first to Istanbul on 25 March 2018 where he stayed with close relatives. After a week the police came to the house in Nurdagi asking for him, and arresting his brother Ali. They were asked for his medication and he declined to do so. The appellant's relatives have helped him escape from Turkey and he felt he had no alternative and he left on 1 June 2018 concealed in a lorry. He entered the United Kingdom on 8 June 2018 and got in contact with his cousin.

8. The appellant says he would be arrested, detained and tortured on suspicion of being part of the PKK if returned to Turkey and since he had left his hometown the officers had come to his house five times looking for him. Although the police said he had gone to the United Kingdom, the police did not believe it and believed that he had joined the PKK.

9. Since arriving in the United Kingdom the appellant met his partner whom he married in a religious ceremony. They have since had a child.

10. The appellant continues to suffer from psychological problems and mental health problems and has been referred for psychological therapy.

11. It is of note that the appellant underwent a screening interview on 27 June 2019. He also underwent a substantive interview on 8 July 2019 and a supplementary interview later that month, the appellant stating that there had been difficulties at the interview.

The Respondent's Case

12. The respondent accepted the appellant's nationality, given that he had a Turkish passport but did not accept that he was Kurdish, noting that he had failed to give any detail or insight indicative to his ethnicity but that even were he Kurdish, the restriction on Kurds and in particular the Kurdish language had occurred in Turkey. The respondent did not accept that he was a member of HDP, given inconsistencies in his account and, as she rejected him being Kurdish, did not accept that he was arrested because he had expressed his opinion in support of Kurds on Facebook. She considered also that there were internal inconsistencies in his account as to what information he had shared, relating also that it was no longer illegal to speak Kurdish in Turkey.

13. The respondent also noted numerous internal inconsistencies in the appellant's account as to whether or not he had had problems at the protests he had attended and as to his role at the protests. She noted also that the appellant's account of the injuries he had suffered was inconsistent and it lacked credibility that those who had inflicted the injuries on him would have taken him to a doctor.

14. The respondent did not accept that there was an arrest warrant out for the appellant in Turkey considering that his explanations in interview were wholly speculative to the extent that he did not know if the claimed warrant had his details on it or if it exists. She did not accept, in light of the background evidence, his claim that the Turkish authorities did not issue arrest warrants. She did not, despite the Rule 35 report, consider that the appellant's account of ill-treatment was made out.

15. The respondent considered also that his failure to claim asylum until 21 June 2019, having been arrested on 14 June 2019 when detected working illegally, cast doubt on his credibility.

16. The respondent did not consider that the appellant had been compelled to complete his military service, noting his claim to have deferred it and that he would be able to pay a fee to avoid having to serve. He had also said that he was willing to do so. Noting in any event he would be exempted owing to his mental health.

The hearing on 9 April

17. I heard evidence from the appellant who gave evidence through an interpreter. I also had before me bundles prepared by both parties.

18. The appellant adopted his witness statement adding that he had obtained the copy of the HDP Party membership form from his elder brother in Turkey who had sent it to him via WhatsApp. He said his brother had obtained it as it was in the possession of his friend and he had asked the friend to give it to his brother. He said the friend also had a copy of it as he too was a member of HDP. He said that the draft evasion report had been sent to his family and again had been sent to him via WhatsApp, as had the prescriptions obtained when his father got him medicine.

19. In cross-examination the appellant said that his mother's first language is Kurdish and his father is Turkish. He said sometimes Kurdish was spoken at home and sometimes Turkish and that when he was very young not only he did not recall well, his mother and her friend spoke Kurdish but he was not permitted but he was forbidden to do so. Asked why as Kurds they do not speak Kurdish if they are proud of their heritage, he said that he was proud of being Kurdish and that the culture, food, etc. was taught to them but because his father's Kurdish was not too good, his mother did not speak to them in Kurdish much and it was forbidden in school even to say that you are Kurdish. He said he is proud to be Kurdish.

20. The appellant said he had not really had the chance to learn Kurdish in the United Kingdom as the community here says it is somewhat controversial. It was put to him that the Home Office case is that if he claims to be Kurdish it was not likely that he would speak little Kurdish. He said that in Turkey there is such a situation that you are not allowed to speak Kurdish but he wanted to learn it and to teach it to his child. He said in the context of Turkey it is difficult to speak Kurdish.

21. It was put to him that in his interview he says his mother is Kurdish and his father is Kurdish and that she had taught him Kurdish. He said "no" and that his father does not really speak Kurdish and he got a little from both of his parents. Asked to explain why between the first and second interview he had said he had attended two protests, then three protests he said that the first was for the workers that came over from Syria.

22. The appellant said that he had posted material on Facebook in support of HDP. As to why there were no printouts to show this, he said that he could have done so but because that he was arrested because of it and, when he was arrested, his profile was deleted and he was told that he would not be able to post anything again. He said that he had mentioned this before.

23. The appellant confirmed he had been arrested twice in Turkey but said that there was no inconsistency between what he had said as to the duration of both; he did not understand why it was said he was held for two days in the screening interview).

24. The appellant said that he had not left Turkey before and he had been going to continue to stand up for rights.

25. As regards the second arrest, that he had been cleared, that the first arrest was for two nights and three days, same for the second. He said that he had had three interviews, that the third interview had been caused by the interpreter's mistake, that he had been consistent. It was put to him that when spoken to by a doctor (see Rule 35 report) he had been electrocuted in detention. He said yes and he had been beaten and his nose is still broken. As to why he had not mentioned this when questioned about his injuries he said that he had always been subjcted to every sort of torture, his arms, nose and foot broken. It was put to him he had not mentioned about the nose being broken and it was done in both the first and second detention. He said that he had spoken to his GP about this and this was documented.

26. The appellant said he had not had much contact with his family since he has left but his mother was in contact with his wife. They had last been in contact two days ago. The appellant was then asked about his arrests, about the arrest warrant. (The interview 2, question 134 and 135). He notes a confusion about this but he said that after the first arrest he was let go as there was not enough evidence and that in 2018 the house was raided even without there being an arrest warrant.

27. Asked how many times the house had been raided in Turkey he said that it had been raided twice and they arrested him and that after he came here he found he had been raided five times, thus more than seven times. Asked as to approximate dates he said that the rest were after his arrest and he did not know the exact date but he knew it was over five times. He said that there were raids in 2020 but he was not sure about 2021. He said that there was raids in 2019 and three times in 2020 and he is in contact with his older brother. He did not know why this was not contained in his witness statement. It was put to him that he had only mentioned five raids as at July 2019 and thus if there were three in 2020 that made a total of eight raids, not seven. He said he had said more than seven.

28. The appellant clarified that it was not his oldest brother who had been arrested and tortured and that he was not in contact with him. He said that his family members did not know where he was either.

29. The appellant was asked to explain why the draft evader notice said that he had been captured. He said that he was not caught and the arrest was issued on 15 May 2018. He said that the arrest warrant was issued on 15 May 2018.

30. The appellant was asked about the second substantive interview, confirming that it was due to the interpreter not translating everything that he had said during the first substantive interview.

31. The appellant said he was not involved in politics in the United Kingdom as he did not know if there were many protests here and because of the pandemic he was not able to leave the house. He says he did not know anyone really apart from his family. He said he did not have time to conduct online protests as before but as he

was a bit subdued because of the pandemic and also because of his family looking after a small child.

32. The appellant confirmed that he had not claimed asylum until arrested for working illegally and that was because he was scared that he might be sent home. He accepted he had cousins who had been granted asylum. It was put to him that surely he would have discussed his problems with them and had asked for advice. He acknowledged that and said he was afraid after everything that happened that he was scared, was not ready and he was waiting to prepare himself.

33. The appellant confirms that he had not registered with a GP until 2019 despite having problems when he arrived. He also said that he had no money.

34. It was put to him that all the documents he had relied upon had been sent via WhatsApp and were just copies. He confirmed that and could not explain why he had not asked for the hardcopies to be sent over.

35. In re-examination he was asked if there had ever been a document ordering his arrest apart from on account of draft evasion. He said there had never been a document issued but after he was released and the second time a signature had been written on a blank piece of paper and he was told that he could be arrested.

36. I then heard submissions. Mr Kotas relied on the refusal letter submitting that it was significant that the appellant does not speak much Kurdish and that there were discrepancies, in that he had said that his father does not really speak Kurdish, yet in the interview (Q187 to 193) that he had been taught by both. He had only given quite minor details about the differences in culture and that his responses to Q76 and 77 were vague, there also being discrepancies with regard to questions at interview at 85 and 892, as well as 45 (third interview). There was insufficient evidence of social media online but had only now been volunteered and that nothing in his witness statement addresses the points raised by the Secretary of State.

37. Mr Kotas submitted further that there were discrepancies as to the length of the appellant's detentions and as to how he had been ill-treated in Turkey. He submitted that there had been exaggeration in the evidence and that whilst some weight could be attached to the Rule 35 report it was not probative. He submitted further that the appellant was changing his evidence about whether an arrest warrant had been issued and there was a discrepancy in the number of raids. It was also of note that the appellant did not know what happened to his younger brother.

38. Mr Kotas submitted that no issue had been taken with the translation of the document relating to draft evasion, yet it said that he had been captured in May 2018 which was entirely inconsistent with the account that he was in Istanbul nor had this been mentioned in interview either. It was submitted that little weight could be attached to that or the other documents transmitted by WhatsApp.

39. Mr Kotas submitted that there was a serious delay in this case which had not been properly explained. It was not credible that the appellant's fear of being sent back to

Turkey explained the delay, given that his family had been granted asylum and he would have discussed it.

40. In response, Ms Daykin submitted that the appellant's account needed to be seen in the context of the CPIN Report. She drew my attention to the fact that the Turkish authorities the HDP and PKK as being one and the same and that, following the 2016 attempted coup, there had been a harsh reaction towards any perceived opposition. She submitted that many HDP members had been detained, including the party leader and that counterterrorism was being used against HDP political figures, some of whom had been removed from office and replaced. She submitted that there was a risk to HDP members and their families and that people may be arrested, detained, beaten then released if the family members sought cannot be found. She submitted further that there is a risk of ill-treatment and torture after arrest and in police custody and that ordinary members come to the attention of the authorities by attendance at rallies or simply by being vocal. Coming to the attention of the authorities puts individuals at risk of persecution.

41. Ms Daykin submitted further that the points made about the Kurdish language were not supported by the evidence. She submitted further it was unclear why the appellant's ethnicity was rejected and that there is still not full acceptance of Kurdish ethnicity.

42. Ms Daykin submitted further the appellant had explained about the Facebook posts and propaganda he had shared in his interview and that it had been deleted by the police. That was consistent with known activities as was the assumption that because he had posted information about HDP, it was assumed that he had supported the PKK. She submitted further that the appellant had been consistent and that note should be taken of the fact that the first substantive interview had had to be corrected by the third one, that he had effectively been re-interviewed.

43. Ms Daykin submitted that the appellant was at risk of being identified even though he had acted at low level.

44. Turning to the issue of arrest warrants she submitted that what the appellant said today was correct and that it was not that a piece of paper had been issued stating that he was to be arrested, but that he became aware that he was wanted when the police came to his house after he left for Istanbul and that there has appeared to be significant confusion over language on this issue.

45. Ms Daykin submitted that the issues taken by the respondent as regarding his speaking of Kurdish did not identify discrepancies and that he had previously referred to his Facebook profile being deleted. She submitted that any discrepancies as to the number of days spent in detention were not sufficiently serious to undermine his credibilities nor indeed were any apparent inconsistencies as to how he had been treated in detention given that he had not been asked in interview to set out what injuries had happened in any detail. She submitted that there was no real inconsistency in the number of raids on the family house and that it was possible that

the report on the draft evasion could mean that his details were captured. He submitted further that it was clear that it was his fear that had prevented him from claiming asylum.

The Law

46. It is for the appellant to show to the lower standard that he is at risk of persecution on return to Turkey. In assessing his credibility, I have considered all the evidence in the round in the light of his diagnosed medical problems, the Rule 35 report indicating possible torture. The letter from his GP dated 10 September 20219 indicates he has been prescribed anti-depressants and presents with features of depression and Post-Traumatic Stress Disorder; no further details are given. I consider the appellant's account and the documentary evidence in the light of the background evidence provided as part of the whole.

47. In assessing credibility, I note that UTJ Gill upheld First-tier Tribunal Judge Bonavero's findings in relation to the Article 8 claim. Those do not, in my view, fall to be considered as part of the assessment of credibility in respect of the protection claim, not was it submitted that I should do so.

48. In assessing the interview records of the appellant, I bear in mind the purpose of the screening interview is not for an appellant to set out the details of his claim and I bear in mind also the dangers inherent in attaching too much weight to discrepancies between what is said in the screening interview and later. I also bear in mind the dangers inherent in relying on apparent discrepancies between substantive interviews, where, as here, the second substantive interview was held because of difficulties which had arisen during the first substantive interview. In that context, I bear in mind that, the appellant did not say in his second substantive interview that there had been no problems with the interpreter. Accordingly, the answer to Mr Kotas' question premised on that basis, is not one to which weight can be attached. The appellant was asked if he had understood the questions and answered yes but that is not a confirmation of what he had said in response to the questions had been properly recorded.

49. Turning to the background evidence set out in the CPIN entitled "Report of the Home Office Fact-Finding Mission Turkey: Kurds, HDP and the PKK, conducted 17 June to 21 June 2019, I note as regards the Kurdish language that it is widely spoken throughout Turkey [6.3.1] and in the past its use was supressed. I accept it is not used officially [6.3.5] and that in some cities it is difficult to speak it in public without adverse consequences. It is also of note [6.5] that education is conducted in Turkish and that would have been the case when the appellant was of school age. I note that it is not in dispute that the appellant was educated to the age of 18 leaving school with a diploma from the Lise.

50. No evidence was put before me that the appellant's name is characteristically Kurdish, either as this regards his family name or his first name. Equally of note is the CPIN entitled Turkey: Kurds of February 2020, in that, at 2.4.2 and at paragraph 4.4.3 it indicates that not all those who identify as Kurdish have that as their mother

tongue. It is evident that there is discrimination against those who speak Kurdish and that its use feeds into the suspicions of the Turkish authorities towards Kurds. It is in that context not definitive that the appellant's inability to speak more than a little Kurdish is not indicative that he is not Kurdish or does not identify as Kurdish.

51. In the screening interview, for reasons which are not clear, main language is recorded as "Kurdish" with "Turkish" crossed out yet the interview (as were the others) were carried out in Turkish. No submissions were made on that and I draw no inferences from that.

52. It is also evident both from the report on the Kurds at 6.2 and also a fact-finding report at section 3 that the Turkish authorities do appear to conflate support for the HDP with support for the PKK despite as Amnesty International points out [3.1.6] that many HDP supporters and members are critical of the PKK and their methods. Similarly, HDP members are targeted if they criticise the authorities (see section 3.23 to 3.27). It is difficult not to conclude that the Turkish authorities use alleged support for the PKK as a means to justify suppression of the HDP and Kurdish identity.

53. In that context, the submission in the refusal letter at page 9 that because it is no longer illegal to speak Kurdish that this somehow indicates that the reason for his arrest is simplistic, and fails to take into account the evidence that despite it no longer being illegal to speak Kurdish, there is still widespread discrimination against Kurds, and the assumption on the part of the authorities that those who identify as Kurdish or support HDP are supporters of the PKK.

54. That said, there is an inconsistency in the evidence as to from whom the appellant learned a little Turkish. He said it was from both parents in interview, but that his father was Turkish in evidence.

55. There are, as the respondent notes, differences between the appellant's account of his attending protests, but it is wrong to state they are numerous. That said it is unclear whether or not he had problems at them; he does not describe any particular problems and it is of note that he was arrested from home.

56. That said, it cannot be argued, as the respondent seeks to do, that being a low-level member without a specific role, makes it unlikely that he would be arrested; the background evidence as noted above paints a very different picture.

57. What the respondent refers to in the refusal letter as discrepancies at pages 8 and 9 are not. The appellant stating that he is an active member but does not have a specific duty is not an inconsistency, nor did the appellant say that he shared pro-PKK propaganda; he said he was *accused* of that. Nor is what he did say "alternative"; that necessarily implies either/or, and what the appellant said is cumulative.

58. I turn next to the alleged discrepancies in the appellant's account of his arrests, whether there has been an arrest warrant issued against him, and as to the number of raids on the family home.

59. In the screening interview, it is recorded that the appellant said he had been arrested twice: 27 July 2017 for 2 days; 20 March 2018 for three days. It is also recorded that he said an arrest warrant has been made for him. He also said he is a member of HDP having joined in 2013.

60. In the first substantive asylum interview, the appellant was asked how many protests he had participated in. He said twice, the first being on 7 or 8 October 2014, and that he has been arrested on 27 July 2017 at his house, and was released on 29 July 2017, which he counted as 2 nights and three days. That is logical if you count inclusively and if you were arrested early on day one, and released late on day three.

61. There are differences in the appellant's account of how he was treated while in detention. I draw no inferences adverse from any lack of detail from what was said in his screening interview; he was not asked for detail. [Q. 4.1]. Similarly, care must be taken in comparing the substantive asylum interviews, given the problems with the first but I note that he only mentions being beaten and having bruises. More detail is given in the second at [Q.7] but there is no mention of the nose being broken not in his witness statement. Nor is it said he was given electric shocks/electrocuted although I do not he said that to the doctor who undertook the Rule 35 report.

62. He also said that he had some injuries, and that the police took him to the doctor before releasing him, and that the police told him to cover up, to hide bruises. Yet it is difficult to understand how a broken nose could have been hidden.

63. I find, however, that the appellant has embellished his account of ill-treatment. He has now said in oral evidence that his nose was broken twice and that his arms and foot were broken too. There is no mention of that to the doctor, and no other relevant medical evidence. He also now says he was subjected to every sort of torture, but did not specify. While I can accept that a victim of torture may be reluctant to discuss it, that is not said here, and does not explain the adding to the types and severity. This, I consider, damages his credibility significantly.

64. The appellant also said he was arrested again on 20 March 2018, again from his house, as was his brother Ali who was released after one day; the appellant was released on 22 March 2018, on condition that he did not live there, asked him to be an informer and made him sign a blank piece of paper. He has beaten with truncheons and had bruises. He also said that he first learned of the arrest warrant one week after 25 March 2018 while he was in Istanbul when he spoke to his family by phone; and, that he did not know what was written on the arrest warrant, and that they had come to ask for him while he was in Istanbul. He then said [Q.172] he was not sure if there was a warrant or paper or not, and that all he knew was that the security forces raided the family house.

65. In the second substantive interview, the appellant gave substantially more detail about what had happened on each occasion of his arrests and as to how he was taken to the doctor by the police. He also explained that he had been posting pro-HDP material on Facebook under his own name. [Qs. 25 to 33] and had done so since 2013[

Q.39]. He also said [Q. 56] that he had been detained for 2 nights, three days, being released on 22 March 2018.

66. Asked about the arrest warrant [Q.133ff], he said it was issued when he was first detained, and when asked if he had seen it, said there is no physical warrant, as the system in Turkey is different.

67. The appellant's evidence about the existence of a warrant is inconsistent even considering only the second substantive interview. At [Q.133] he confirmed that he had said in his screening interview that there was an arrest warrant out for him and [Q.134] that it was first issued on 27 July 2017. Only after being asked [Q.135] why he had been released when there was an outstanding warrant, did he say that [Q 137] that there is not a physical warrant, and that the system in Turkey is different [Q. 138].

68. At best, in the evidence before me, the appellant was in effect saying that there was in place an order to arrest him rather than any specific arrest warrant. I accept that his evidence before me only became clear after checking with the interpreter, but it does not follow that there was any confusion in the second substantive interview. That said, his case is now that there is not an official warrant issued against him, but if so, that begs the question of why, when asked, he said there was, and the confusion over the dates.

69. This confusion indicates to me that the appellant had sought to strengthen his case by saying that an arrest warrant exists, then changed it when confronted with the obvious inconsistency in him remaining in Turkey after it was issued. That, I find, diminishes his credibility.

70. With regard to the documentary evidence now provided, I note that the document entitled "Official Report on a Draft Evader/Absentee Capture Report 15 May 2018" is that

> "The obligor with below details wanted for draft evading/absenteeism as per the records of the Ministry of National Defence was captured on 15.5.2018 during an investigation carried out by the Nurdagi District Gendarmerie Command/Sakcagozu Gendarmerie Station Command Personnel".

71. As Mr Kotas submitted there is simply no explanation for this although I do note that whilst the deliverer and person present (a master sergeant) and a private in the gendarmerie bear signatures, there is no signature for the draft evader. Nonetheless absent any submission to the contrary I conclude that this document indicates that the appellant has been captured when that is not part of his claim and indeed on his evidence he was in Istanbul on the date of this document. No explanation has been put forward as to why an attempt has been made to rely on a document which is inconsistent with the appellant's case and I consider that reliance on it damages his claim and credibility significantly.

72. I consider that the appellant's credibility is seriously damaged by his failure to claim asylum until over a year after he entered the United Kingdom. Whilst I can accept that somebody may be afraid of the consequences of claiming asylum, in this case the appellant had the positive example of the cousins whom he accepts applied for asylum and were granted. When this was put to him the appellant's answer was that he was preparing to claim yet that is not something he has said before. On the contrary, in his written statement he said that he was psychologically in fear, was scared to speak and had no idea how the claim was to be made as he was not guided at the time [11]. It is also of note that the appellant in this period in the United Kingdom entered into a serious relationship with his partner and also obtained employment. He was also able, as he accepts, to obtain a passport from the Turkish Consulate in London. These are not the actions of a person in fear to such an extent that he would not claim asylum.

73. I do, however, accept that the appellant has demonstrated some knowledge of HDP and how the party has done in elections. He is also aware of demonstrations, but much if not all of what he has said is in the public domain. Following the fortunes of HDP and what has happened in Turkey to Kurds is consistent with the appellant having a Kurdish ethnicity, but it does not follow that he was a member or active supporter of the party to the extent that it brought him to the adverse attention of the authorities.

74. I accept that the appellant has scars as documented in his rule 35 report, but it is not a detailed forensic analysis. There may be many reasons why someone has scars on knees, back of the head and a broken nose, and it does not necessarily follow that these injuries were inflicted by the Turkish Authorities.

75. Taking all of these factors into account, and in the light of the background evidence, I conclude that the appellant's credibility is diminished to such an extent that I cannot accept his account of being detained and ill-treated by the Turkish authorities; or, that he was asked to be an informer or to sign a blank sheet of paper. I am not satisfied that he or his family have come to the adverse attention of the authorities, or that the family home has been raided, or that any of them are politically active. Nor am I satisfied that he left Turkey illegally. I am not satisfied either that he is a draft evader.

76. I accept that the appellant is Kurdish and is from Nurdağı, Gaziantep. That is, to an extent, confirmed by his passport, and his place of birth does not appear to be in dispute.

77. Having made these findings, I must consider what is likely to happen to the appellant on return to Turkey. The most recent Country Guidance is IK (Returnees - Records – IFA) Turkey CG [2004] UKIAT 00312. While I am duty bound to apply it, it is of concern that it is of such vintage and in the light of the huge changes that have taken place in Turkey since 2004; the material on which it is based is now of perhaps only historical interest.

78. That said, I bear in mind that the appellant has a properly issued Turkish passport. He has not satisfied me that he is of adverse attention to the Turkish authorities and at worst it would be evident that he is a Kurd who is being removed from the United Kingdom having either had no leave or whose leave had expired, and had claimed asylum. There is insufficient evidence in the material provided to me to show that, as a result, he would be at risk on return of ill-treatment of sufficient severity to amount to persecution or entitle him to humanitarian protection or breach article 3 of the Human Rights Convention.

79. Accordingly, for these reasons, I dismiss his appeal on protection grounds.

80. As the remaking of this appeal does not extend to article 8, I do not consider that aspect of his claim although I do observe that the appellant is now the father of a British citizen child.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.

2. I remake the appeal by dismissing it on all grounds.

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.

Signed Date 17 May 2021

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul

ANNEX – ERROR OF LAW DECISION

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08347/2019_P

THE IMMIGRATION ACTS

Decided under Rule 34 without a hearing
on 6 October 2020

Decision sent on:
……

Before:

UPPER TRIBUNAL JUDGE GILL

Between

K T Appellant
(ANONYMITY ORDER MADE)

And

The Secretary of State for the Home Department Respondent

Anonymity

I make an order under r.14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. No report of these proceedings shall directly or indirectly identify him. This direction applies to both the appellant and to the respondent and all other persons. Failure to comply with this direction could lead to contempt of court proceedings.
I make this order because this appeal relates to the appellant's protection claim.
The parties at liberty to apply to discharge this order, with reasons.

This is a decision on the papers without a hearing. No written submissions were received from either party. A face-to-face hearing or a remote hearing was not held for the reasons given at paras 6-14 below. The order made is set out at para 53 below. *(Administrative Instruction No. 2 from the Senior President of Tribunals).*

Representation (by written submissions):
For the appellant: [No written submissions received]
For the respondent: [No written submissions received]

DECISION AND DIRECTIONS

1. The appellant, a national of Turkey born on 1 May 1992, appeals against a decision of Judge of the First-tier Tribunal Bonavero (hereafter the "Judge") who, in a decision promulgated on 28 October 2019 following a hearing on 1 October 2019, dismissed his appeal on asylum, humanitarian protection and human rights grounds against a decision of the respondent of 21 August 2019 to refuse his claim for protection made on 21 June 2020.

2. The appellant's application to the Upper Tribunal for permission to appeal was granted by Upper Tribunal Judge Stephen Smith in a decision dated 2 April 2020, sent to the parties on 17 July 2020 together with a "*Note and Directions*" issued by Judge Smith.

3. In his "*Note and Directions*", Judge Smith stated that, in light of the need to take precautions against the spread of Covid-19, he had reached the provisional view, having reviewed the file in this case, that it would be appropriate to determine questions (a) and (b) set out at para 1 of his "*Note & Directions*", reproduced at my para 5(i)(a) and (b) below, without a hearing. Judge Smith then gave directions which set a timescale for the appellant to make written submissions on questions (a) and (b), for the respondent to lodge submissions in reply and for the appellant to lodge further submissions in response. He also gave directions which provided for any party who considered that despite the foregoing directions a hearing was necessary to consider questions (a) and/or (b) to submit reasons for that view within a certain timescale.

4. Neither party has responded to the "*Note and Directions*".

The issues

5. I have to decide the following issues (hereafter the "*Issues"*):

   (i) whether it is appropriate to decide the following questions without a hearing:

   (a) whether the decision of the Judge involved the making of an error on a point of law; and

   (b) if yes, whether the Judge's decision should be set aside.

   (ii) If yes, whether the decision on the appellant's appeal against the respondent's decision should be re-made in the Upper Tribunal or whether the appeal should be remitted to the FtT.

Whether it is appropriate to proceed without a hearing

6. I do not rely upon the mere fact that the parties have not made any submissions as factors that justify proceeding without a hearing. I have considered the circumstances for myself.

7. I am aware of, and take into account, the force of the points made in the dicta of the late Laws LJ at para 38 of Sengupta v Holmes [2002] EWCA Civ 1104 concerning the power of oral argument; and the dicta in the decision in R v Sussex Justices, ex parte McCarthy [1924] 1 KB 256 to the effect that justice must be done *and* be seen to be done, to mention just two of the cases in which we have received guidance from judges in the higher courts concerning the importance of an oral hearing. I am aware of and have applied the guidance of the Supreme Court at para 2 of its judgment in Osborn and others v Parole Board [2013] UKSC 61.

8. Given that my decision is limited to the Issues, there is no question of my making findings of fact or hearing oral evidence or considering any evidence at this stage. The appeal in the instant case is straightforward.

9. In addition, I take into account the seriousness of the issues in the instant appeal for the appellant. This appeal relates to his protection claim which is a serious matter. It also relates to his Article 8 claim human rights claim based, in part, on his alleged relationship with his partner. This is also a matter of some seriousness.

10. I have considered all the circumstances very carefully and taken everything into account, including the overriding objective.

11. I considered the Judge's decision, the grounds and the submissions before me. I was of the view, taken provisionally at this stage, that there was nothing complicated at all in the assessment of the Issues in the instant case, given that the grounds are simple and straightforward and the Judge's decision straightforward. I kept the matter under review throughout my deliberations. However, at the conclusion of my deliberations, I was affirmed in the view I had taken on a preliminary basis.

12. Whilst the Tribunal is now listing some cases for face-to-face hearings and using technology to hold hearings remotely in other cases where it is appropriate to do so, the fact is that it is not possible to accommodate all cases in one of these ways without undue delay to all cases. Of course, the need to be fair cannot be sacrificed even if there would be a lengthy delay in order to hold a hearing face-to-face or remotely or even if there is a consequent delay on other cases being heard.

13. Nevertheless, there are cases that can fairly be decided without a hearing notwithstanding that the outcome of the decision may not be in favour of the party who is the appellant. In the present unprecedented circumstances brought about by the coronavirus pandemic, it is my duty to identify those cases that can fairly be decided without a hearing.

14. Having considered the matter with anxious scrutiny, taken into account the overriding objective and the guidance in the relevant cases including in particular Osborn and others v Parole Board, I concluded that it is appropriate, fair and just for me to exercise my discretion and proceed to decide the Issues without a hearing, for the reasons given in this decision.

Questions (a) and (b) - whether the Judge erred in law and whether his decision should be set aside

The basis of the appellant's asylum claim and Article 8 claim

15. In her decision letter, the respondent summarised the appellant's account of the basis of his asylum claim as follows:

16. The appellant claimed that he was a Kurd by ethnic origin. He claimed to have been an active member of the HDP party in Turkey, having joined in 2013. He claimed to have expressed his opinion in support of Kurds on Facebook as a result of which he was arrested by the Turkish authorities. He also said that he had written propaganda post of the PKK on social media. He claimed to have attended protests in support of the HDP.

17. In his witness statement, the appellant gave a detailed account of the basis of his asylum claim. In summary, he said that he said that he was from the Gaziantep province. His father and extended family members had helped the PKK organisation. He himself joined the HDP in 2013. He was arrested on 27 July 2017 at which time he was accused by police officers of having participated in the PKK organisation. He was arrested again on 20 March 2018, tortured and released after he agreed to provide information about who was helping the PKK. He then left Gazianetp and went to Istanbul. A week later, the police went to his house asking for him. They arrested and tortured his brother. He (the appellant) then left Turkey.

18. The appellant claimed to have entered the United Kingdom illegally in June 2018.

19. The appellant's Article 8 claim was based on private life established since his arrival and family life developed with his partner, MK, who was a Turkish national said to have indefinite leave to remain in the United Kingdom. They entered into a religious marriage on 26 January 2019.

The respondent's decision

20. The respondent did not accept that the appellant was a Kurd or that he was a member of the HDP or that he had participated in activities for the HDP or that he had been arrested and detained. She gave detailed reasons for rejecting the appellant's evidence.

21. The respondent also stated that she did not accept that the appellant was in a genuine and subsisting relationship with MK.

The Judge's decision

22. The Judge summarised the basis of the appellant's asylum claim in one brief paragraph (para 3).

23. At para 12, the Judge said that, in reaching his conclusions "*set out below*", he had considered all of the evidence in the round and that the fact that he had not referred to a specific piece of evidence should not be taken to mean that it had not been considered.

24. At para 13, the Judge reminded himself that the applicable standard of proof was the lower standard. He then said "*I cannot accept the appellant's account*" for reasons "*set out below*".

25. The Judge then set out his reasons at paras 14-22 which may be summarised as follows:

(i) The appellant had delayed in claiming asylum. He claimed asylum only after having been apprehended working illegally in the United Kingdom and after removal directions had been set. His explanation for his failure to claim asylum on arrival was not persuasive. The delay in claiming asylum damaged the appellant's credibility (para 14).

(ii) The appellant had not told the truth about his partner's pregnancy, saying that the baby was lost in 2017 or (on another version) in 2019, whereas the medical record indicated that the pregnancy was terminated in May 2019. Whilst the untruth was not directly related to the appellant's protection claim, his evidence damaged his credibility generally (paras 15-19).

(iii) The Rule 35 report was of little probative value (paras 20-21).

(iv) The appellant's failure to provide the originals of evidence said to have come from BDP in Turkey in the form of a "*Member Form*" affected the weight that he (the Judge) could attach to this evidence. The Judge said that he approached the evidence in line with the guidance in Tanveer Ahmed "*by assessing it in the round, alongside all of the other aspects of the appellant's credibility*" (para 22).

(v) The Judge then said that: "*Taking all of the evidence before me into account, and applying the lower standard of proof, I reject the appellant's claim to have been detained by the Turkish authorities on account of his political activities…".*

26. The Judge then considered the appellant's Article 8 claim, at paras 24-31 which read:

"Article 8

24. As for the appellant's Article 8 claim, I must first consider whether he and [MK] are in a genuine and subsisting relationship. I make these findings to the balance of probabilities.

25. I have set out above my findings in relation to [MK's] pregnancy, together with the difference in the couple's account as to whether they had ever separated. This tends to suggest that the couple have not been truthful in their evidence.

26. I note that the appellant initially gave an incorrect date of birth for [MK] to the Home Office when he was first encountered.

27. I was surprised that the appellant did not call any witnesses other than his wife to give evidence as to the nature of their relationship. This is in the context of the relationship having been cast into question by the respondent in his refusal letter. The appellant's account is that he lives with [MK] and her family, and that he is close to her father. In those circumstances I find this omission to be problematic. It is not cured by the fact that there are written statements apparently drafted by family members, to which I can give only limited weight.

28. I also note that the appellant was arrested working in Colchester, whereas [MK] lives in Edgware, some 70 miles away.

29. On the other hand, I note that the appellant and [MK] were able to answer some questions consistently in relation to their daily routine, and that there are some photos appearing to show them together. I also note that there is a single utility bill addressed to the appellant at what is said to be [MK] address. I also give some weight to the letters said to emanate from family members attesting to the relationship.

30. On balance, taking all of these factors into account, I find it more likely than not that the appellant is not in a relationship with [MK] as claimed. It follows that I find that he does not enjoy family life in the UK within the meaning of Article 8.

31. As for his private life, the appellant has only lived in the UK, on his account, for a short period of time. He does not meet the requirements of the immigration rules, and there are no other compelling reasons for which his removal would amount to a disproportionate breach of his private life rights."

The grounds

27. In relation to the appellant's protection claim, the grounds contend that the Judge erred in his assessment of credibility. It is said that his assessment of credibility was brief. His starting point was the delay in claiming asylum and his rejection of the appellant's explanation for the delay formed the basis of his rejection of the asylum claim. The Judge then considered inconsistencies in the evidence between the appellant and his partner concerning the pregnancy and documentary evidence in relation to the appellant's membership of his political party but rejected the entire protection claim without reference to any other evidence. He failed to assess credibility in the round.

28. The Judge erred in refusing the appellant's family life claim solely on credibility grounds. The Judge set out the factors for and against the appellant but failed to explain why those factors which weighed against the appellant were more persuasive.

29. The Judge's consideration of the appellant's private life claim was limited to para 31. He considered only that the appellant had lived in the United Kingdom for a short period of time. There was no consideration of the extent of the appellant's relationships with extended family members and the part that these play in his private life.

Assessment

(i) The Judge's decision on the appellant's protection claim

30. In relation to the appellant's protection claim, it is plain from my summary at para 25 above of the Judge's reasoning that he did not engage at all with any aspect of the appellant's evidence concerning his alleged political activities in Turkey or that he had been arrested and detained twice or that his brother had been arrested and detained.

31. I acknowledge that judges are not obliged to deal with every aspect of the evidence before them in terms. I acknowledge that the Judge specifically said at para 12 that, in reaching his conclusions "*set out below*", he had considered all of the evidence in the round and that the fact that he had not referred to a specific piece of evidence should not be taken to mean that it had not been considered.

32. Nevertheless, the fact is that he failed to engage at all with the respondent's detailed reasons for rejecting the entire basis of the appellant's asylum claim, including that he was a Kurd by ethnic origin, and he failed to engage at all with the appellant's very detailed witness statement. It is entirely unknown what the Judge made of the credibility issues raised by the respondent in the decision letter, both as to the appellant's claim that he was a Kurd and as to his claimed political activities.

33. Whilst the Judge was entitled to take into account the appellant's delay in claiming asylum, he himself recognised that this was not determinative. It is difficult to see the relevance of the discrepancies in the evidence between the appellant and MK concerning MK's alleged pregnancy to his asylum claim.

34. As a consequence, the Judge's reasoning concerning the rule 35 report and the documentary evidence concerning the appellant's membership of a political party stands in a vacuum.

35. As a result, I am driven to conclude that the Judge gave inadequate reasons for his adverse credibility assessment, in the sense explained in R (Iran) & others v SSHD [2005] EWCA Civ 982. I am satisfied that the Judge failed to give reasons in sufficient detail to show the reasons that led to his conclusion that the entire basis of the appellant's asylum claim was incredible.

36. Plainly, the Judge's adverse credibility assessment was material to his decision to dismiss the appellant's asylum claim, humanitarian protection claim and related Article 3 claim.

(ii) The Judge's decision on the appellant's Article 8 claim

37. Turning to the Judge's assessment of the evidence concerning the appellant's relationship with MK, it is clear from para 25 of the Judge's decision that he relied upon his earlier assessment, in connection with the appellant's protection claim of the evidence concerning MK's pregnancy. He said that this tended to suggest that the couple had not been truthful in their evidence. He then went on to assess other aspects of the evidence concerning the relationship between the appellant and MK at paras 26-29 before stating, at para 30, that "*on balance, taking all of these factors into account*" he found it more likely than not that the appellant was not in a relationship with MK as claimed and that he did not enjoy family life in the United Kingdom.

38. Para 9 of the grounds contends that, in relation to the appellant's family life claim, the Judge set out the factors for and against the appellant but failed to explain why those factors which weighed against the appellant were more persuasive.

39. There is no substance in this ground. The Judge did not need to go further than he did in giving his reasons for reaching his finding that the appellant was not in a

relationship with MK and did not enjoy family life in the United Kingdom. It is self-evident that the factors that went against the appellant were weightier than the factors that were in his favour.

40. Para 10 of the grounds contends that the Judge erred in refusing the appellant's Article 8 family life claim solely on the ground of credibility. There is no substance in this ground, given that the appellant's family life claim was based on his alleged relationship with MK and that the credibility of his evidence that he had a genuine relationship with MK was in issue.

41. In relation to the Judge's consideration of the appellant's private life claim, para 12 of the grounds contends that the Judge considered only that the appellant had lived in the United Kingdom for a short period of time and that there was no consideration of the extent of the appellant's relationships with extended family members and the part that these play in his private life.

42. I have noted that the only evidence about the appellant's extended family in the United Kingdom was as follows:

    (i) At para 11 of his witness statement, the appellant made a bare reference to "*extended families*" when he said that he claimed asylum "*with the help of my partner and extended families".*

    (ii) The Judge's record of the proceedings shows that the appellant said in cross-examination at the hearing that his family in the United Kingdom were his wife and cousins.

43. Given the very brief evidence the appellant gave, as described above, of having "*extended families*" and cousins in the United Kingdom, there is simply no substance in the suggestion at para 12 of the grounds that the Judge failed to consider the extent of the appellant's relationships with extended family members. The simple answer to this ground is that, in the absence of any evidence before the Judge of the extent of the appellant's relationships with extended family members, there could be no such assessment.

44. I have therefore concluded that the grounds fail to establish that the Judge erred in law in his consideration of the appellant's family life and private life claims under Article 8.

(iii) Summary of conclusions on grounds

45. For the reasons given at paras 30-36 above, I am satisfied that the Judge did materially err in law in making his adverse credibility assessment of the appellant's evidence concerning the basis of his asylum claim, humanitarian protection claim and his related Article 3 claim. However, for the reasons given at paras 37-44 above, he did not err in law in making the findings he made in relation to the appellant's Article 8 claim.

46. I therefore set aside the Judge's decision and limit the ambit of the re-making to the appellant's asylum claim, humanitarian protection claim and related Article 3 claim. The credibility of the appellant's evidence about the basis of his protection claim will need to be re-assessed on the merits. The Judge's findings in relation to the

appellant's family life claim and his private life claim stand, including his finding that the appellant is not in a genuine relationship with MK.

(iv) Re-making the decision

47. The next question is whether the decision should be re-made in the Upper Tribunal or whether the appeal should be remitted to the First-tier Tribunal.

48. In the majority of cases, the Upper Tribunal when setting aside the decision will re-make the relevant decision itself. However, para 7.2 of the Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal (the "Practice Statements") recognises that it may not be possible for the Upper Tribunal to proceed to re-make the decision when it is satisfied that:

> "(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
>
> (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal."

49. I have decided that this case does not fall within either para 7.2(a) or (b), given that I have decided that the Judge's finding in relation to the appellant's Article 8 claim shall stand and that the re-making of the decision on the appellant's appeal is limited to his asylum claim, humanitarian protection claim and the related Article 3 claim. In view of the limited ambit of the re-making of the decision, I have concluded that it is fair and appropriate for the Upper Tribunal to re-make the decision on the appeal.

50. In addition, I have concluded that there should be a face-to-face hearing in the Upper Tribunal as and when it is possible to hold such a hearing, given that credibility is in issue and that the appellant gave evidence in the First-tier Tribunal through an interpreter.

51. An interpreter will be provided in the Turkish language. If this is incorrect, the appellant must notify the Upper Tribunal in accordance with Direction 1 below.

52. Documents which have already been filed and served do not need to be filed and served again. The parties should take note that the Upper Tribunal has on file the following documents:

> (i) a 227-page bundle of documents, submitted on the appellant's behalf under cover of a letter dated 20 September 2019 from Kilic & Kilic Solicitors; and
>
> (ii) the respondent's bundle.

Notice of Decision

53. The decision of the First-tier Tribunal involved the making of errors on points of law such that the decision to dismiss the appeal on protection grounds (asylum,

humanitarian protection and the related Article 3 claim) is set aside. The re-making of the decision is limited to the appellant's asylum claim, humanitarian protection claim and related Article 3 claim. The decision will be re-made in the Upper Tribunal.

Directions to the parties

1. Within 5 calendar days after the date on which this "*Decision and Directions*" is sent to the parties, the appellant to notify the Upper Tribunal in writing (copied to the respondent at the same time) whether or not he intends to call oral evidence at the resumed hearing and, if so, confirm the number of witnesses who will give evidence. If the language in which he requires an interpreter is not the Turkish language, then he must at the same time notify the Upper Tribunal in writing of the language of interpretation.

2. If the appellant wishes to rely upon any further evidence, he must comply with rule 15(2A) and submit such evidence in support, **no later than 28 days before the hearing date**. Any such further evidence must be contained in a paginated and indexed bundle, together with a skeleton argument dealing with the relevant issues in the re-making of this appeal.

Signed Date: 6 October 2020
Upper Tribunal Judge Gill