Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2021-000164
PA/10881/2019

THE IMMIGRATION ACTS

Heard at Field House, London	**Decision & Reasons Promulgated**
On Friday 22 July 2022	**On Thursday 8 September 2022**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

AA
[ANONYMITY DIRECTION MADE]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
An anonymity order was made by the First-tier Tribunal. This is an appeal on protection grounds. It is therefore appropriate to continue that order. 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.

Representation:
For the Appellant: Mr B Ali, solicitor advocate, Aman solicitors, instructed by Kinas solicitors
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer.

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DECISION AND REASONS

BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge Buckwell promulgated on 8 June 2021 ("the Decision"). By the Decision, the Judge dismissed the Appellant's appeal against the Respondent's decision dated 25 October 2019 refusing his protection and human rights claims. A previous decision also dismissing the appeal was set aside following a review by Resident First-tier Tribunal Judge Zucker and the appeal was listed for redetermination before Judge Buckwell.

2. The Appellant is a national of Turkey. He was previously a citizen of the People's Republic of China and is a Muslim Uighur. The Respondent intends to return him to Turkey, a country of which he is a national. He acquired that nationality in 2010. China does not permit dual nationality.

3. The Appellant came to the UK from Turkey in January 2018 as a visitor. He returned after that (short) visit. He then returned to the UK again as a visitor on 9 November 2018 (using his own passport) and claimed asylum on 3 January 2019.

4. The Appellant claims to be at risk on return to Turkey due to his support for the Gulen Movement in Turkey. He claims that his friend (MI) was a member of the Gulen Movement and had been collecting funds from the Uighur community. The Appellant said that he had himself donated funds to the movement. MI used to attend the restaurant which the Appellant owned and would bring other members of the Movement to that restaurant. The Appellant has since sold the restaurant. The Appellant said that he had been arrested in Turkey between his two visits on suspicion of providing support to the Gulen Movement. The Appellant claimed that his house had been raided after the Appellant had travelled to the UK in November 2018 and that the authorities were looking for him. The Appellant's wife (also a Uighur Muslim of Chinese origin) and his children continue to live in Turkey. His wife continues to hold a Chinese passport. The Appellant claimed that his son had been interrogated on 28 January 2019 and that the Turkish authorities had threatened to remove his wife to China.

5. The Turkish authorities are said to hold the Gulen Movement responsible for the 2016 coup. The Appellant also says that, if an individual is suspected of a connection with terrorism, there is an agreement permitting Turkey to return such a person to China. He therefore fears refoulement to China. The Appellant himself does not claim to have been a member of the Gulen Movement but says that MI was an active and known supporter. He says that MI avoided detention by escaping from Turkey.

6. The Respondent accepts that the Appellant is a Uighur Muslim. She accepted that he could not be returned to China due to past adverse

interest from the authorities there. However, the Appellant's support for the Gulen Movement was not accepted and it was not accepted that the Appellant had come to the attention of the Turkish authorities in the past or would be of interest in the future. It was not accepted that Turkey would return the Appellant to China.

7. Judge Buckwell also found the Appellant's claim to be at risk in Turkey not to be credible. He did not accept that the Appellant's account of involvement with the Gulen Movement via MI was true. He did not accept that the Appellant had the link he claimed to have with MI. He did not accept that a raid had taken place as alleged. He also did not accept that the Appellant's wife had been threatened with removal to China. He did not accept that there was evidence of deportations of Uighurs to China by the Turkish authorities. He did not accept that the Appellant would face any risk as a Uighur Muslim or as a mere supporter of the Gulen Movement.

8. The Appellant's pleaded grounds can be summarised as follows:

Ground (i): The Judge erred by placing weight on answers given in the Appellant's screening interview. That interview was conducted in Turkish and not in Uighur.

Ground (ii): The Judge failed to have regard to evidence in the Appellant's bundle about Turkish deportations to China.

Ground (iii):The Judge erred in his assessment of documentary evidence relating to the sale of the Appellant's restaurant.

Ground (iv):The Judge erred by failing to consider risk on return to China.

9. Permission to appeal was refused by First-tier Tribunal Judge Parkes on 8 July 2021 in the following terms so far as relevant:

> "... 3. The Judge noted that the Screening Interview was conducted in Turkish in paragraph 10 and his difficulties in paragraph 25 and a cautious approach was adopted in paragraph 150. The decision does not show that the Judge placed any real weight on the Screening Interview and relied on other inconsistencies in assessing the Appellant's credibility. The risk of removal to China from Turkey was considered in paragraph 155 and the evidence of risk was in the final sentence. The other reasons given, including the lack of interest in the Appellant's family and none had been detained, justified rejecting the Appellant's account. The grounds do not address the other reasons given by the Judge. The decision has to be read as a whole, which the grounds do not do, and if read properly does not show any error in the approach taken or the findings made.
>
> 4. The grounds disclose no arguable errors of law and permission to appeal is refused."

10. Following renewal of the Appellant's application to this Tribunal permission was granted by Upper Tribunal Judge Plimmer on 8 December 2021 in the following terms:

> "1. It is arguable that the FTT erred in law at [155] in finding an absence of risk in relation to Turkey's intentions to return Chinese Uighers, such as the appellant's wife, to China.
>
> 2. The materiality of any such error will need to be carefully considered because the other grounds have less merit for the reasons summarised by FTT Judge Parkes when refusing permission. The grounds of appeal may however be linked and for that reason I grant permission on all grounds."

11. The Respondent filed a Rule 24 reply on 10 February 2022 seeking to uphold the Decision.

12. On 19 July 2022, Mr Ali filed a skeleton argument. He sought to raise a number of new grounds of appeal which he submitted were "Robinson obvious". There was no application to extend time for new grounds to be raised. That may not be relevant to whether those new grounds should be considered if they are truly "Robinson obvious" but is of course relevant if new grounds are otherwise sought to be relied upon out of time. I permitted Mr Ali to argue those grounds without strenuous objection from Mr Whitwell (who did however point to the extreme lateness of them being raised). I deal with those below after my consideration of the initial grounds on which permission was granted.

13. The matter comes before me to decide whether there is an error of law in the Decision and, if I conclude that there is, whether to set aside the Decision for re-making. If the Decision is set aside, I may either retain the appeal in this Tribunal for redetermination or remit it to the First-tier Tribunal to re-hear the appeal. Both representatives agreed that if I were to find an error, the appeal should perhaps be retained in this Tribunal given that it has now been heard twice in the First-tier Tribunal and to avoid further delays.

14. I had before me the Appellant's and Respondent's bundles as before the First-tier Tribunal. I refer to documents in the Respondent's bundle as [RB/xx] and the Appellant's bundle as [AB/xx].

15. Having heard submissions from Mr Ali and Mr Whitwell, I indicated that I would reserve my error of law decision and issue that in writing. I therefore turn to that consideration.

DISCUSSION AND CONCLUSIONS

Original Grounds of Appeal

16. I begin my consideration with the grounds raised in the written permission to appeal application. I deal first with the errors which Judge Plimmer found to be less persuasive as I can deal with those relatively shortly.

Ground (i)

17. At [150] of the Decision, in the section setting out his findings, Judge Buckwell made reference to the screening interview as follows:

> "At this stage I confirm my concerns as to the screening interview for all the reasons entirely properly raised by Mr Mohammad. Although these were not circumstances where the Appellant had been interviewed on arrival (he had made an appointment to submit his protection claim), nevertheless a cautious approach to evaluating a screening interview record should usually be regarded as sensible. Here that is undoubtedly so. One reason would suffice: the provision of a Turkish, rather than a Uighur, interpreter in itself gives rise to enough concerns to bring the screening interview into doubt."

18. Mr Ali acknowledged that entirely appropriate self-direction but said that the Judge's consideration thereafter did not reflect the application of it. The high point of Mr Ali's submission is that the Judge has referred to "interview records" in the plural at [154] of the Decision when making his findings about the alleged raid on the Appellant's property by the Turkish authorities and the contact with his wife in that regard. That reference however has to be seen in context. The full paragraph reads as follows:

> "In his oral evidence the Appellant sought to clarify how his wife had communicated with him, to inform him of the claimed raid. The Appellant claims that he was informed of the November 2018 raid as a consequence of contact from his wife in Turkey. As stated above, there are inconsistencies in the evidence of the Appellant as to how he had such contact with his wife. The Appellant appeared in the interview records to have referred to such telephone discussions with her. However, in the appeal hearing, questions were raised in that respect and the Appellant indicated his communications had always been via WhatsApp texting. Nevertheless, the Appellant gives further contrasting evidence in terms of paragraph 19 of his adopted appeal statement. Therein he clearly makes reference to his wife having 'phoned' him. He does not refer to any form of texting."

19. I accept that the Appellant did say in his screening interview that his wife had phoned him ([3.1] at [RB/12]). However, that was also his evidence in the witness statement that followed the screening interview ([17] at [RB/20]). In fact, in the substantive asylum interview, the Appellant said that his wife contacted him by text ([78] at [RB/40]). At [19] of his appeal statement ([AB/6]) as the Judge points out, the Appellant again said that his wife had phoned him. During his oral evidence, however, he said that they contacted each other via WhatsApp. The inconsistencies in the Appellant's evidence in that regard arise therefore not from what was said at the screening interview but from what was said in the substantive interview against the Appellant's witness statements and as between those statements and his oral evidence. Even if the Judge has had some regard to the evidence given at the screening interview, therefore, there is no error. His answer given at that interview was repeated in his witness statements thereafter. The inconsistencies were between the screening interview and those statements on the one hand and the substantive interview and his oral evidence on the other.

Ground (iii)

20. The Appellant says that he has sold the restaurant in Turkey which he used to own. The Judge made the following findings in that regard:

> "156. In terms of the restaurant which the Appellant stated he operated, most recently the Appellant provided claimed evidence that the restaurant had been sold by his wife (in his absence) for a sum of $3,000. A purported documentary bill of sale, or similar, was provided, in the original Turkish language. There is a certified English language translation. I have looked at both the original document and the translation. I note with some surprise that as it is stated to be a legal document the only date which appears on either document is the date of the certification of the contents into the English language by an English language interpreter. Such a document lacking a date does not add to the overall credibility of the Appellant's claim. If the sale of the restaurant took place, it may well have been simply because it suited the Appellant and his family to sell the premises (as the Appellant hoped to remain in this country) and as a source of generating some immediate capital."

21. The Appellant's pleaded ground in this regard is that the Appellant has no control over what is an official document. Any deficiencies should not be a reason for refusing his appeal. First, as a matter of factual accuracy, the Judge is right to point out that the document purporting to be a formal business transfer agreement ([AB/20-21]) is not dated. The Judge was entitled to be sceptical for that reason about the legitimacy of the document on which the Appellant relied. Second, and following on from that, the weight to be given to documentary evidence is a matter for the Judge considering it unless there is an error in approach. There is no such error here. Third, it is not clear that the Judge rejected this part of the Appellant's account because of the deficiencies in the document. As the Judge pointed out, even if it were true that the Appellant had sold the restaurant, the reason for the sale might have been for financial reasons. Fourth, therefore, the Judge's finding in this regard as applied to the Appellant's protection claim is neutral. The Judge was entitled to find as he did for the reasons he gave. There is no error in his approach or finding.

Ground (iv)

22. The Appellant asserts that the Judge should have considered also the risk to him in China. That is a nonsense. The Respondent had conceded that she would not return the Appellant to China. He is no longer a national of China having taken nationality of Turkey (and since China does not permit dual nationality). The Appellant was not being returned to China and the Judge was not therefore required to consider whether he would be at risk there. The only basis on which the Judge might have been required to consider this is if it could be shown that the Turkish authorities would return the Appellant, notwithstanding his Turkish nationality, to China. I deal with this below under ground (ii). There is no error shown by the Appellant's ground (iv).

Ground (ii)

23. I turn then to the ground which found favour with Judge Plimmer and which was the focus of Mr Ali's submissions in relation to the original grounds. This ground concerns the risk that the Appellant, as a Uighur, or his wife (who remains a Chinese national) would be deported by Turkey to China.

24. The Judge dealt with this aspect of the Appellant's case at [155] of the Decision as follows:

> "I do not accept the credibility of the Appellant, in terms of his stated fears in relation to his wife being removed to China. He stated that the Turkish authorities had so threatened in his absence. However a number of years have passed since the attempted coup and there appears to have been no action taken or threatened more specifically against his wife by the Turkish authorities. The claim by the Appellant does not assert that his wife was detained at any point. Additionally, I note that whilst she does not have Turkish nationality, all four children who remain in Turkey with her, hold Turkish nationality. Furthermore, country information presented does not indicate that the Turkish authorities have deported Chinese Uighurs back to the People's Republic of China, nor is there any indication of any such future intentions."

25. The evidence about treatment of Uighurs in China and about return to China from Turkey of Uighurs appears at [AB/84-136]. Those are a series of press reports. I asked Mr Ali to take me to the evidence that Turkey is deporting Uighurs to China. The following summarises his submissions in that regard by reference to those documents. Although Judge Buckwell did not set out this evidence in detail, I have considered it at some length in order to assess whether it undermines the conclusion which he reached in the final sentence of [155] of the Decision

26. The Turkish authorities have signed an extradition treaty with China. At [AB/89], reference is made to that treaty which was signed in 2017. It is there noted that the treaty had been ratified by Beijing in 2020 (the article is dated April 2021 and refers to the previous year). It had not been ratified by that date by the Turkish Parliament. It is to be noted that the article goes on to refer to the visit by the Chinese Foreign Minister in March 2021 and that "the unratified extradition treaty was his top demand". The Turkish government's failure to ratify is said to be reason why "a new strategic partnership" was not signed between Turkey and China. There are said to be fears that the Turkish government would "buckle under Chinese pressure".

27. An article dated April 2021 ([AB/90]) refers to the growing relations between China and Turkey (which appears I note to be somewhat at odds with the previous article in this regard). The article also notes that "it is the Turkish president who calls out Beijing on respect for human rights" in relation to Uighurs. The article goes on to confirm as the previous article that concerns had been raised by China about Turkey's failure to ratify the extradition treaty between them and that this failure might

have led to China's failure to deliver Covid vaccines which had been promised to Turkey.

28. An article at [AB/93-95], again from April 2021, refers to a "deepening courtship" between China and Turkey which it is said would "only intensify the plight of Uyghurs in both countries". This article refers again to the March 2021 visit by the Chinese Foreign Minister to Turkey although with a slightly different perspective placed on that visit (it does not make any reference to China's refusal to enter into a partnership with Turkey or failure to make good on vaccine promises due to Turkey's refusal to ratify the extradition treaty). The fear expressed in this report is that the Turkish President would "crack down on Uyghur asylum seekers the way he also does with Turkish dissidents". The Appellant is of course a Turkish national and although his wife remains Chinese, their children are, as Judge Buckwell noted, all Turkish.

29. The article at [AB/95] refers to Chinese demands for "extradition of specific Uyghurs" and to the Turkish government "sending the refugees to third countries like Tajikistan, from which it is much easier for the Chinese to extradite them". Again, though, these references are to "extradition" not "deportation" and relate to refugees and not those with Turkish citizenship.

30. The article at [AB/96-99] dates back to December 2020. It refers to the Chinese ratification of the extradition treaty. As such, it is concerned with the position of the Chinese authorities rather than the Turkish authorities. Indeed, the picture painted there of the position of the Turkish authorities is one of welcoming the very large numbers of Uighur refugees living in the country (said to be "the largest Uighur diaspora hub in the world"). There is however reference as the previous article to the Turkish authorities bowing to Chinese demands to return to China those who China accuses of terrorism via countries like Tajikistan. The concerns there expressed however are about extradition of those who protest against the Chinese and who do not have residency in Turkey. That is not this case.

31. Mr Ali placed heavy weight on the article at [AB/100-104] which is an article dating back to July 2020 (see index to Appellant's bundle). He does so because it apparently cites a former prime minister referring to a policy of deporting Uighurs. The "policy" is consistent with what is said in the previous articles about Turkey sending Uighurs wanted by the Chinese authorities to Tajikistan in order that they can be extradited to China and has to be viewed in the same context. This is the only reference to which Mr Ali made mention indicating that any individuals have in fact been deported ([AB/102]). There is reference there to "at least two women of the community, and their children" being deported via Tajikistan in the past year. There is no other detail of the status of these women and children in Turkey nor why they were singled out for return. The "policy" is said to be driven by Turkey's "desire for Chinese investment in Turkey". As I have already pointed out, though, articles

from April 2021 (after this article) refer to the Turkish authorities continuing to criticise China and refusing to ratify the extradition treaty as a result of which the Chinese authorities refused to enter into a new partnership.

32. The articles at [AB/108-119] dating back to January and February 2021 follow the by now familiar theme of concerns that Turkey would bow to Chinese pressure for economic ends (including in exchange for Covid vaccines) to ratify the extradition treaty and deport/extradite to China those wanted by the Chinese authorities. I note at [AB/112] that the article refers to those who "do not have Turkish citizenship, meaning Ankara cannot protect them". That would not of course include the Appellant who does have citizenship. Although his wife does not, her children are Turkish nationals as Judge Buckwell pointed out. There is in any event no evidence either here or in the other articles that Turkey has ratified the extradition treaty since.

33. The article at [AB/121] refers to a Uighur being arrested in Turkey in January 2021 and being threatened with deportation. There is no further article showing that this individual was in fact deported. The articles do refer to other detentions for deportation of Uighurs said to have links to terror groups but do not confirm any actual deportations.

34. The article at [AB/128-132] dating to 9 February 2021 appears to relate to the same "round up" of Uighur refugees for forcible return. Again, though, this article does not confirm any actual deportations.

35. The high point of the Appellant's case therefore is that there is some rapprochement between Turkey and China due to the former's desire for investment into Turkey and delivery of Covid vaccines and that the two countries have signed an extradition treaty which it is feared might lead to return of Uighurs wanted by the Chinese authorities to China from Turkey. There is however no evidence that Turkey has ratified the treaty. There is evidence that Turkey has continued to call out the Chinese authorities for human rights abuses of the Uighurs in spite of the consequences for economic cooperation and vaccine delivery.

36. There is some very limited evidence that the Turkish authorities have returned two women and their children to China via Tajikistan in the course of the year to July 2020 but what is said to be a "policy" of such action is not reflected elsewhere in the articles. There is some evidence of a round-up of Uighur refugees in early 2021 with a view to deportation but no evidence of actual deportation.

37. In any event, this background material has to be considered in the context of the Judge's other findings at [155] of the Decision. As Judge Buckwell pointed out, although the Appellant's wife remains a Chinese national, her children are Turkish. More importantly, there is no evidence that the authorities have taken any action with a view to removing her. The Appellant is a Turkish national and has been since 2010. There is

nothing in the background evidence to suggest that the Turkish authorities are returning Turkish nationals who are Uighurs to China. Nor, importantly, is there evidence that Turkey has ratified the extradition treaty between it and China notwithstanding Chinese pressure to do so. As Mr Whitwell also pointed out, the articles are in some cases based on at best second-hand evidence, for example, what is said by a journalist to be a speech by a former (not present) politician referring to a policy adopted by the Turkish authorities.

38. Although Judge Buckwell may not have carried out an exhaustive analysis of the background evidence concerning returns of Uighurs to China by Turkey as is set out above, in light of the other reasons he gives based on this specific case at [155] of the Decision, he was entitled to reach the conclusion that neither the Appellant nor his wife would be at risk of deportation to China.

39. If and insofar as the Appellant's case is that the Turkish authorities would extradite him to China, there is no evidence that Turkey has ratified the extradition treaty. Whilst there remains some very limited evidence of Turkey using other third countries to extradite "by the back door", that is simply insufficient to show a real risk to the Appellant. In any event, there is no evidence that the Chinese authorities have asked the Turkish authorities to take any such action in relation to the Appellant since he left China on the last occasion in 2008. It is said by the Appellant in his statement that the Chinese authorities refused to renew his passport in 2009 because of a search warrant issued for his arrest but that is over thirteen years ago.

40. For the foregoing reasons, the pleaded grounds of appeal challenging the Decision do not disclose any error of law. I therefore move on to the grounds raised in Mr Ali's skeleton argument.

Further Grounds of Appeal

41. There are essentially four grounds raised. Mr Ali submits that the Judge has erred by failing to take into account relevant country guidance and has erred by failing to make factual findings on salient parts of the Appellant's case. He also submits that the Judge has adopted a flawed approach to credibility and risk. Before I turn to consider whether the grounds are even arguable, I need to say something about the late stage at which these grounds are raised.

42. I begin by accepting that if the grounds are "Robinson obvious" as Mr Ali contends, then there is no need for him to make an application to raise the grounds out of time. If he is right that the points are "Robinson obvious", they should have been picked up by the Tribunal as ones which were clear on the face of the Decision and there would be no need for either party to raise them. Indeed, that is the whole point of the principle.

43. I begin by reminding myself of the principle. In R v Secretary of State for the Home Department ex parte Robinson [1998] QB 929, the Court of Appeal was concerned with an application for judicial review of a refusal by the Immigration Appeal Tribunal of permission to appeal against a decision of a special adjudicator. The court said:-

> "38. It is .... necessary for us to identify the circumstances in which it might be appropriate for the Tribunal to grant leave to appeal on the basis of an argument not advanced before the special adjudicator, or for a High Court judge to grant leave to apply for judicial review of a refusal of leave by the Tribunal in relation to a point not taken in the Notice of Appeal to the Tribunal.
>
> 39. Because the rules place an onus on the asylum-seeker to state his grounds of appeal, we consider that it would be wrong to say that merely arguability should be the criterion to be applied for the grant of leave in such circumstances. A higher hurdle is required. The appellate authorities should of course focus primarily on the arguments adduced before them, whether these are to be found in the oral argument before the special adjudicator or, so far as the Tribunal is concerned, in the written grounds of appeal on which leave to appeal is sought. They are not required to engage in a search for new points. If there is readily discernible an obvious point of Convention law which favours the applicant although he has not taken it, then the special adjudicator should apply it in his favour, but he should feel under no obligation to prolong the hearing by asking the parties for submissions on points which they have not taken but which could be properly categorised as merely "arguable" as opposed to "obvious". Similarly, if when the Tribunal reads the Special Adjudicator's decision there is an obvious point of Convention law favourable to the asylum-seeker which does not appear in the decision, it should grant leave to appeal. If it does not do so, there will be a danger that this country will be in breach of its obligations under the Convention. When we refer to an obvious point we mean a point which has a strong prospect of success if it is argued. Nothing less will do. It follows that leave to apply for judicial review of a refusal by the Tribunal to grant leave to appeal should be granted if the judge is of the opinion that it is properly arguable that a point not raised in the Grounds of Appeal to the Tribunal had a strong prospect of success if leave to appeal were to be granted."

44. Two points arise from that extract. First, the principle arises usually in the context of points taken by the Tribunal of its own volition when granting permission to appeal and not where, as here, a different representative has thought of points which were clearly not evident to those drafting the original grounds. I do not suggest that it can never apply in those latter circumstances. The Appellant here says that the point should have been recognised by the Judge granting permission and if that were so, the principle could equally apply. I therefore proceed on the footing that it could apply in these circumstances.

45. Second, however, the test when considering whether to grant permission to appeal on a "Robinson obvious" ground involves a higher hurdle. There is good reason for that. If the point is obvious, it has to be more than just arguable. It has to be a very clear error. The higher hurdle was

emphasised by this Tribunal in its guidance in AZ (error of law: jurisdiction; PTA practice) Iran [2018] UKUT 00245 (IAC). I accept that the guidance there given is directed at Judges granting permission on the papers on grounds raised of their own volition. However, the test remains the same as Mr Ali's argument has to be that the grounds now raised are so obvious that they should have been spotted by Judge Plimmer when she granted permission and, had she identified them, she would have been bound to raise them and grant permission on them.

46. With that preface, I now turn to consider the new grounds raised by Mr Ali. I deal first with the country guidance point, second the factual findings which it is said that the Judge failed to make and then the legal approaches to fact finding and risk.

Country Guidance

47. The country guidance which Mr Ali argues that the Judge failed to consider is IK (Returnees – Records – IFA) Turkey CG [2004] UKIAT 00312 ("IK"). The first point to note is that the Judge does not appear to have been referred to IK by either party. Mr Ali said that I could not know if that is so. He was not the representative who appeared for the Appellant and the fact that the Judge had not referred to it in the Decision was not conclusive evidence that he was not taken to it.

48. Whilst Mr Ali is not the advocate who appeared before Judge Buckwell, he remains instructed by the same solicitors as represented the Appellant before Judge Buckwell. Those solicitors must (or should) know whether the Judge was referred to a particular authority. If they did not know, they could have checked with the advocate who did appear. Mr Ali also could have done so but did not. Moreover, the Decision is extremely detailed including as to the submissions made ([119] to [142] of the Decision). Nowhere is there any reference to IK. I have also looked at the handwritten notes of proceedings and I can find no reference to IK. Absent any evidence to the contrary, I proceed on the basis that the Judge was not referred to IK by the parties.

49. Mr Ali made the valid point that the Respondent was also represented and could have taken the Judge to it. Moreover, I accept that if a Judge has failed to refer to country guidance which is relevant, then that might be an obvious error whether or not either party has referred to the guidance.

50. I accept that IK remains extant country guidance in spite of its date. I accept that it deals with returns to Turkey. However, there the clear relevance ends. The guidance is concerned with return to Turkey of those of Kurdish ethnicity. Mr Ali said that the guidance applies equally to the Turkish response to any dissident being returned to Turkey. Mr Whitwell argued that, even if the Judge should have considered IK, there was no error when one considers the guidance.

51. The guidance in IK does not appear in any headnote but I accept comes from what is said at [14] of the decision. Going through the factors there raised, (a), (b), (c), (d), (e), (g) and (h) do not arise because the Appellant's account of involvement with the Gulen Movement, past interest by the authorities and past detention was not accepted as credible. There is no suggestion that the Appellant or his family have ever been associated with Kurdish separatist movements ([f]). Similarly, the Appellant is not of Kurdish ethnicity or of Alevi faith ([i] and [j]). The Appellant left Turkey on his own passport. It was not argued on his behalf that he does not have a valid passport (or could not obtain a renewal if it has expired) ([k]). The Judge did not believe that the Turkish authorities had continued to pursue the Appellant because he did not believe that the Turkish authorities had any interest in the Appellant in the first place ([l]). It was no part of the Appellant's case that he had been asked to inform on the Gulen Movement and in any event his involvement with that Movement was not believed ([m]). There is no suggestion that the Appellant has been involved in any "sur place" activities for the Gulen Movement ([n]). On his own account, the Appellant was nothing more than a supporter who recognised the assistance given by the Gulen Movement ([90] and [91] of the Decision). He described himself as not an active supporter ([35] of the Decision). Draft evasion has never been raised as an issue ([o]).

52. Mr Ali also referred in his skeleton argument to [85] and [86] of IK and submitted that the Appellant should not be expected to lie when questioned on return. The first obvious question is what would he be expected to tell the truth about? The Judge's findings are that the Appellant has not supported the Gulen Movement in any activities as he claimed. Second and in any event, those paragraphs have to be read in context. They appear under the heading of what a person should be expected to say when questioned "if a person faces non-routine investigation". The reasons why a person might end up in that stream on return are set out at [79] to [83] of the decision. They depend on what is known to the authorities about an individual due to past involvement or suspected involvement with dissident organisations, whether an individual is returning on his own passport and whether he has evaded the draft. For the same reasons as set out above in relation to [14] of IK, none of those factors apply in this case.

53. Given the context of IK, it is debatable whether Judge Buckwell should have recognised its potential relevance. Even if IK were in principle potentially relevant to the attitude of the authorities to any dissident organisation apart from Kurdish organisations, once the Judge had found that the Appellant's account of past involvement with the Gulen Movement, past arrest, detention and continuing interest was not credible, the guidance could have no conceivable application. There would therefore be no error in failing to refer to it. It has no application.

54. As I indicated at the outset of this section, given the way in which this was raised, the Appellant also has to show that the point is one which

was so clear and obvious that the Tribunal should have raised it of its own volition. That argument has no merit. I deal below with the issue of permission on this and the other grounds.

Failure to Make Findings

55. At [6] to [10] of his skeleton argument, Mr Ali submits that the Judge has failed to make findings about aspects of the Appellant's case or specific items of evidence. I take those points in the order they are raised.

56. The first item of evidence is a letter from the Eastern Turkistan Educational and Solidarity Association dated 24 June 2019 ([AB/32]). In broad terms, that letter says that the Appellant was a member of the "Uyghur association" (not I note the Gulen Movement), that he provided donations from his restaurant, that he was arrested, accused of involvement in the Gulen Movement and left Turkey in November 2018 after which his home was raided. It is said that the Association is now supporting the Appellant's wife who is concerned that her husband is wanted for arrest by the authorities and that she has been threatened with removal to China if her husband does not return.

57. Whilst on the face of it, the content of the letter might support the Appellant's account, the Association does not say how it has come to know about any of the events there reported. It is not said that it had any direct involvement in those events or has seen any documentation proving those events (and none is produced by the Appellant in this appeal). The information must come either from the Appellant or his wife. It is similarly notable that there is no witness statement from the Appellant's wife which could provide some corroboration of the claims there made (particularly as regards events post-dating the Appellant's departure).

58. A Judge is not required to deal with each and every item of evidence. The Judge dealt with the first-hand account given by the Appellant about what had happened in Turkey before he left. He did not believe that account. He was not required to consider a letter written by an unknown official of an association which merely records what is the Appellant's case without offering any independent corroboration.

59. It is next said that the Judge failed to make any finding about the Appellant's support for the Gulen Movement and attendance at a Gulen school.

60. The Judge deals with the evidence about the Appellant's support for the Gulen Movement at [21], [30], [34], [35], [90], [91] and attendance at the Gulen school at [40]. The chronology of the Appellant's account has to be borne in mind. He says that he attended a Gulen school in 2013/14. Although there is inconsistency in the Appellant's accounts, MI is said to have left Turkey in 2016/17. The attempted coup in which Gulenists were suspected took place in 2016. The Appellant says that he

was detained for the first time in May 2018. Asked why he would be targeted by the authorities, given that he claimed never to have been actively involved in the Gulen Movement, the Appellant expressly claimed that it was because they could not find MI ([40] and see also [54]). It is for that reason that the Judge considered the core of the claim to be an interest provoked by the Appellant's association with MI ([146]) and why that was the central focus of his findings.

61. The Judge also dealt at [159] of the Decision with whether mere support for the Gulen Movement would be sufficient to generate a real risk of adverse attention. He said this:

> "It was not advanced before me that there would be any reason which was connected to the Gulen Movement for why the Appellant would be at risk on return or of interest to the Turkish authorities. I make this finding in view of the comments relating to the CPIN made by Judge Zucker as to the liability to arrest and detention of individuals not linked to the Movement."

62. I begin by noting once again that the way in which Mr Ali now seeks to present the case is not the case advanced for the Appellant below. It was not apparently suggested that the Appellant would be at risk based on mere support. Indeed, on the Appellant's case he had attended a Gulen school in 2013/14 and encountered no interest on that account. His case was that it was his association with MI which had generated the interest. However, for completeness, I have also considered what is said in the CPIN which appears at [AB/33-83]. The version of the CPIN (entitled "Turkey: Gulenist Movement") is dated February 2018. Mr Whitwell indicated that there is a later version dated 2022 but, aside differences in numbering, it does not apparently provide any new information which is relevant to this case.

63. Although the Gulenist Movement has been proscribed as a terrorist organisation, at [2.3.5], the CPIN indicates that "establishing membership of the movement is not sufficient to be recognised as a refugee". It will be recalled that this Appellant is not even a member. Reference is made to arrests and detention of those suspected of involvement in the 2016 coup. The Appellant does not claim to have been involved or have been suspected of involvement. He has not had his passport cancelled ([2.4.10]). He left Turkey on his own passport. The Appellant does not fall within any of the groups singled out by the authorities after the attempted coup for attention or who are targeted due to expression of pro-Gulenist views. In short, the CPIN does not show that a mere supporter, particularly one who is not active, would be targeted by the authorities because of that support. The Judge was therefore entitled to find as he did that there is no risk based on the Gulen Movement aside the claimed involvement with MI which he rejected as not credible.

64. The Appellant also says that the Judge failed to make a finding about the Appellant's restaurant being raided, his family being approached, and a threatening letter being sent to the Appellant's wife by the police. The

evidence in that regard is noted at [39] and [49] of the Decision. The evidence about events which are said to have occurred in Turkey after the Appellant's departure cannot be in the Appellant's own knowledge. They arise only from what the Appellant has been told by his wife. The Judge found the Appellant's evidence about contact with his wife to be not credible ([154]: cited at [18] above). As already noted, the Appellant's wife did not provide a statement. The Appellant does not produce the letter which it is claimed was sent to her by the police. It follows that, since the Judge did not accept that the Appellant had been in contact with his wife as he claimed, he did not accept what the Appellant's wife is said to have told the Appellant.

65. Further, I return to the point that the reason why the Appellant claimed to have come to the adverse attention of the Turkish authorities is because of his claimed links with MI. Since those links were found not to be credible, the Judge found that the Appellant was not of interest and there would be no reason for any continuing interest as the Appellant claimed.

66. The Appellant also says that the Judge failed to make a finding about his friend being detained. The evidence in this regard is at [38] of the Decision. It is to be noted that the Appellant claims that his friend was arrested when the police came to arrest him in November 2018 ([78] AIR at [RB/40]). The Respondent doubted this part of the Appellant's case as the Appellant says that he was quickly released from detention in May 2018 whereas he says that his friend was still detained many months after the arrest. The Appellant does not say why his friend would have been arrested at that time (although he may be said to infer that it was connected as he said that the friend attended MI's lectures with the Appellant). Again, however, there is no direct evidence about this arrest which is said to come from the friend's wife via the Appellant's wife. I repeat what I say above about the Judge's finding that the Appellant's contact with his wife was not credible and regarding the lack of evidence from her.

67. The final finding said to be absent relates to the Appellant's son who is said to have been detained. The Judge dealt with this at [157] of the Decision as follows:

> "The Appellant additionally claimed that his son had been detained. That is a part of the account of the Appellant. In my view of my overall assessment of his claim I do not give significant weight to it. Even if it were true, it does not mean that any detention and questioning were related to the core claim by the Appellant…"

68. That essentially makes the same point as I make above in relation to the arrest of the Appellant's friend. In fact, in interview, the Appellant said only that his son had been interrogated on 28 January 2019 ([81] at [AB/40]). In his witness statement, he says at [22] ([AB/9]) that his son was taken away and interrogated. Either way, this information can only have come from the Appellant's wife and the Judge did not accept the

evidence about this contact. Nor, as I repeat, was there any statement from the Appellant's wife (or from his son).

69. I do not accept that any of the above grounds identify errors of law. Either they relate to evidence which could make no difference, or the findings are not required due to the central finding about lack of contact. It is for the Appellant to present his case and some of these issues were not apparently raised by his representative.

70. Further, and in any event, it cannot sensibly be said that any of these are grounds which disclose clear and obvious errors such that they should have been picked up by the Judge considering the permission application. The principle in Robinson has no bearing on these issues. If the Appellant thought that these claimed omissions constituted errors, he should have raised the issues in the original grounds.

Legal Approach to Credibility and Risk

71. Mr Ali asserts that [152] of the Decision represents a misdirection in law. That paragraph reads as follows:

> "On such a key element of his own evidence, the Appellant's inconsistent and conflicting evidence on an aspect which ought to be absolutely 'crystal clear' (and easily remembered) utterly flaws his credibility with respect to his reliance upon the connection claimed to [MI]. In turn my finding in this respect, as to such a significant aspect of the Appellant's evidence and claim, brings into doubt the claim overall."

72. I fail to see how a "Lucas" direction given in the context of criminal proceedings has any bearing in an immigration appeal. However, I would accept as a matter of law that, just because an appellant has lied about one aspect of his case does not necessarily mean that the whole of his case is to be disbelieved.

73. There is however no such error in this case. As I have noted previously, the Appellant's case is that the Turkish authorities took an adverse interest in him due to his links with MI. The issue of when MI is said to have left Turkey and what has become of him since was therefore of central importance to the Appellant's case. There was an inconsistency in the Appellant's evidence about this (leaving aside that MI is said to have left Turkey without difficulty at least eighteen months before the Turkish authorities are said to have taken any interest in the Appellant). The Appellant's case is that he was not a member of the Gulen Movement. He was not even an active supporter. He gave some money which he described as donations but there is no suggestion of any adverse interest before May 2018 and the Appellant himself attributes that interest to his links to MI. The Judge was therefore entitled to disbelieve the claim because he found the core of it to be untrue based on inconsistencies.

74. It is opaquely suggested that the Judge's finding in relation to the inconsistency about MI's departure was erroneous in any event but it is not said why and those paragraphs are not challenged. Mr Ali did not develop this argument in oral submissions.

75. For the foregoing reasons, there is no error in the Judge's approach. Again, there is no clear and obvious error. The finding in relation to the inconsistency concerning MI's departure date was not challenged. I fail to see how the Judge's finding based on that inconsistency could be said to involve any error.

76. Finally, Mr Ali also says that the Judge erred in his approach to risk. He submits that the Judge failed to determine the appeal by reference to background material and the country guidance. He refers to Karanakaran v Secretary of State for the Home Department (2000) INLR Imm AR 271. The principle relied upon is uncontroversial: a Judge must take account of all relevant material when carrying out the assessment as to future risk. However, this further ground adds nothing to the other further grounds with which I have already dealt. For the same reasons as already given, this ground does not identify any error of law let alone one which should have been clear and obvious to the Judge granting permission.

Permission to Appeal

77. Having rejected Mr Ali's argument that any of the further grounds disclose any error of law which was "Robinson obvious", and in spite of the fact that he does not formally apply in his skeleton argument for permission to appeal if that argument is rejected, I have considered whether it is appropriate to grant permission to appeal.

78. The first issue as Mr Whitwell reminded me is the timeliness of any application (were one to have been made). Here, the application is at least eleven months out of time. The initial application was made in time on 10 August 2021. Mr Ali's skeleton argument was filed on 19 July 2022. That is a very significant delay.

79. Mr Ali was asked about the reasons for the delay. He said that he had pleaded the additional grounds very shortly after he was instructed and allowing for time to take instructions. That may explain any delay on his part but does not excuse the prior delay by the Appellant or his solicitor. In truth, this is simply a case of a new advocate taking points that could have been taken before if they had been recognised and were thought to have any merit but were not. As such, I also reject Mr Ali's argument that the Appellant who is vulnerable (as any asylum seeker) should not be prejudiced by the delay and that time should therefore be extended irrespective of any delay. That is tantamount to a submission that in all asylum cases this Tribunal should allow grounds to be taken at any stage of the process without requiring any good reason to be shown. Such a

submission is without merit. The usual principles apply. For those reasons, I refuse to admit the application as it is out of time.

80. In any event, I would have refused permission to appeal on the substance. For the reasons I have already given, there is no arguable merit to any of the further grounds. Even if I had granted permission, as I have made clear, the further grounds do not identify any error of law in the Decision.

CONCLUSION

81. For the foregoing reasons, I conclude that the initial grounds disclose no error of law in the Decision. I refuse to admit the application (if one had been made) to rely on further grounds and in any event refuse permission on the basis that those further grounds are not arguable. Even if I had granted permission, I would have concluded that the grounds identify no error of law in the Decision. I therefore uphold the Decision with the consequence that the Appellant's appeal is dismissed.

DECISION

I am satisfied that the Decision does not involve the making of a material error on a point of law. I therefore uphold the Decision of First-tier Tribunal Judge Buckwell promulgated on 8 June 2021 with the consequence that the Appellant's appeal remains dismissed.

Signed L K Smith Dated: 26 July 2022
Upper Tribunal Judge Smith