IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000261

First-tier Tribunal No: PA/01225/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 25 June 2024

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

KD
(ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Ms A Ahmed, Senior Home Office Presenting Officer
For the Respondent: Ms J Lanigan, Counsel instructed by Virgo Solicitors

Heard at Field House on 3 July 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter "the claimant", against a decision of the Secretary of State refusing him asylum and leave to remain on human rights grounds. Permission was granted by the Upper Tribunal which identified particularly as potential errors of law the First-tier Tribunal's failure to apply properly the ruling in **Devaseelan (Second Appeals – ECHR – Extra-Territorial Effect) Sri Lanka* [2002] UKIAT 00702** and particularly failed by having regard to an arrest warrant that predated the earlier Tribunal determination without considering why that evidence had not been available when the case was first heard.

2. More importantly the judge granting permission said:

> "The [claimant] was convicted of murder in 2007 and given an indefinite sentence. He was assessed by the parole board as a medium risk of serious harm to intimate partners and thus has the potential to cause serious harm. It is arguable that the judge failed to give adequate reasoning for failing to uphold the Section 72 certificate. The judge arguably relied merely on the [claimant's] remorse, his assurance that he could control his emotions having undertaken a course on the same, and that he was only convicted of one offence".

3. I begin by considering carefully the First-tier Tribunal's decision. This noted that the claimant was born in 1971. He claimed to have entered the United Kingdom in 2001 when he was not quite 30 years old. He applied for asylum soon after arrival and his application was refused. An appeal against that decision was determined on 22 October 2001 and dismissed and the claimant's appeal rights were exhausted on 10 February 2005. He remained in the United Kingdom.

4. On 12 December 2007 at the Central Criminal Court he was convicted of murder and sentenced to life imprisonment with a minimum term of twelve years. He was notified of his liability for deportation in December 2016 and claimed asylum a second time on 20 December 2016. In January 2019 he was notified of the decision to make a deportation order. The judge outlined the Secretary of State's reasons for refusing the application. First, the Secretary of State said that the claimant was excluded from protection under the Refugee Convention by reason of his being sentenced to life imprisonment and Section 72(2) of the Nationality, Immigration and Asylum Act 2002. There was a presumption that he constituted a danger to the community in the United Kingdom that he had not rebutted. Second, the Secretary of State did not believe that the claimant's life would be in danger because of a blood feud following his conviction for murdering his wife but if there was anything in the point he could look to the state of Turkey for protection. Third, he had not shown that he would be at risk because of his political opinion; that point was dealt with thoroughly before the First-tier Tribunal on the last occasion, and finally he could internally relocate to other parts of Turkey. He was excluded from a grant of humanitarian protection by paragraph 339D(iii) of HC 395 and as his deportation was conducive to the public good and he had not demonstrated there were very compelling circumstances to outweigh the public interest in deportation.

5. The judge agreed to a request to treat the claimant as a vulnerable witness.

6. The judge found that the first Tribunal did not accept that the claimant was involved with the DKHP-C and particularly did not accept that, that, had the claimant been involved with the DHKP-C between 1994 and 2000 as claimed, the authorities would not have brought charges against him. The judge found his

claim to have gone to Istanbul to hide inconsistent with his claim to have registered with the Muktah and the Tribunal did not accept that the claimant and his wife were involved in HOP in Istanbul or that the claimant had ever attended demonstrations or been attacked by police as claimed. The Tribunal did not accept that any psychiatric illness suffered by the claimant was secondary to traumatic events in Turkey, and concluded the claimant would not be at risk of persecution in the event of his return. The first Tribunal found the claimant "to be a wholly unreliable witness in regards to his claim of persecution in Turkey".

7. His claim before the judge was advanced on two main grounds. First, he claimed he would risk persecution because he was a member of a particular social group, that is the potential victim of a blood feud, and second, he did face a risk of persecution on account of his imputed political opinion as a supporter or member of the DKHP-C.

8. The judge then gave appropriate self-directions concerning the issues and the basic legal principles to apply. At paragraph 27 the judge expressly directed herself that she had to follow the decision in **Devaseelan**.

9. The judge spent (with respect) a surprisingly long time deciding that the claimant had been convicted of a particularly serious crime. He is a murderer and he has been convicted of a particularly serious crime. The judge then directed herself to the question "Does the [claimant] constitute a danger to the community of the United Kingdom?".

10. The judge reminded herself that the Court of Appeal had determined in **EN (Serbia) v SSHD [2009] EWCA Civ 630** that the danger to the community had to be real but the conviction of a particularly serious crime did not of itself establish there was such a risk. The judge then summarised the Secretary of State's case. The Secretary of State maintained that the claimant's

> "continued presence in the United Kingdom constitutes a danger to the community. The [Secretary of State] relies on the seriousness of the [claimant's] offending in the UK, the sentencing remarks of the Recorder of London, the length of sentence imposed, and the fact that the [claimant] was assessed by the Parole Board as posing a medium-high risk of serious harm to known adults (intimate partners), as factors which point in favour of the [claimant] constituting a danger to the community".

11. The judge contrasted this with an outline of the claimant's case which was that the claimant had been released on licence in August 2018 and had been under the supervision of the Probation Service since then and had "remained compliance(sic) and he has fully engaged in work to ensure that he does not reoffend again". Although the claimant posed a medium risk of harm to future partners if he offended the risk of reoffending was assessed as low. The probation officer clearly indicated an expectation that the claimant would successfully reintegrate into the community. The judge acknowledged the claimant expressed remorse and regarded that as relevant but not determinative. The judge was impressed with the claimant's work with a Justice Awareness programme and Thinking Skills Programme and his expressed view that he was able to control his emotions using relaxation techniques and walking away from conflict. The judge also found it relevant that the claimant had no history of offending save for the murder and no further convictions after his release from prison. Taking everything into account the judge found that he had rebutted the presumption and was therefore not disqualified from protection under the Refugee Convention.

12. The judge then looked at the claimant's case and reminded herself expressly that following **Devaseelan** the existing determination was the starting point. The judge noted that it was the claimant's case that he would be killed in the event of his return to Turkey by his wife's family seeking vengeance for her murder. Relatives had declared that intent and other family members had been attacked as a result; two had died. It was the claimant's case that the Turkish authorities would not offer protection but would take action after an offence had been committed which could be too late for him. He supported his claim with a witness statement and oral evidence which the judge set out in outline. The judge considered background evidence and the judge concluded that blood feuds do sometimes occur in Turkey. In particular, she found this conclusion supported by the Turkish Penal Code providing an enhanced penalty for those who murder as a result of a blood feud. The judge found it plausible, based particularly on a Reuters article, that the claimant's wife's family would want revenge for her murder. The judge particularly had regard to a "Non Jurisdiction Order" from the "Kayseri Chief Public Prosecution Office" and a letter from the Gendarmerie Station Commander confirming that relatives of the claimant had been killed and in other cases injured as a result of a feud. The judge concluded that if the claimant returned to his home village his wife's family would either attempt or succeed in killing him as a result of a blood feud.

13. The judge reminded herself that matters did not end there. She still had to consider internal relocation and the sufficiency of protection. Before doing that the judge addressed her mind to any risk arising from imputed political opinions. The judge reminded herself that the first Tribunal made adverse credibility findings, particularly that the claimant was not a supporter or member of the DHKP-C which the judge took as her starting point. The judge noted that the claimant now relied on further witnesses and further documentary evidence.

14. The judge was particularly interested in a warrant dated 2 August 2001 justifying the arrest of the claimant for "Being a member and aiding and abetting of terror organisation called DHKPC".

15. The claimant did not recall when he received the documents but said they had been sent by his brother. Importantly the judge said at paragraph 68 that she had considered the evidence in the round taking the existing findings as her starting point but also considering facts that had occurred since the decision was made.

16. The judge found that she had received evidence of political activity by other family members and the murder of a family member and concluded that there was new evidence supporting the claim to be a supporter of the DHKP-C and accepted the arrest warrant was a useful pointer.

17. The judge said that she had moved on from the findings of the first Tribunal because she found the oral evidence before her credible from witnesses who had not been heard previously. The arrest warrant corroborated the account.

18. The judge then directed herself to country guidance and accepted that persons belonging to "left wing radical organisations" would face a real risk of persecution. The judge found that the claimant was involved with DHKP-C politics until he left Turkey, that he was the subject of an arrest warrant and had been detained and arrested in Turkey and had been ill-treated, and that the claimant had relatives who were accused of being DHKP-C members or supporters.

19. The judge acknowledged that the claimant was last arrested in Turkey in 2001 and there was no evidence of continuing interest in the claimant.

20. It was accepted that the claimant was Kurdish. The claimant did not have a current Turkish passport. The judge found that he would be returned on a one-way travel document which would prompt enquiry. There was "a reasonable likelihood" that he would be identified as a failed asylum seeker and interrogated. It could be expected that his association with the DHKP-C would emerge and this would put him at risk. It is established that a person relocating within Turkey would take his history with him particularly when he registered with the local Muktah as he was required to do.

21. The judge found that the claimant would be at risk on return for political reasons and did not address her mind to internal relocation in respect of a blood feud.

22. Permission to appeal was refused by the First-tier Tribunal and the grounds of appeal to the Upper Tribunal are critical of the judge for (allegedly) not engaging with the grounds.

23. The grounds are characterised with the heading "Making a material misdirection/Lack of adequate reasoning". The first five points go directly to the question of whether the claimant has rebutted the presumption that he is a danger to the community. The important part of the ground is a reminder that the claimant's risk was assessed as a "medium risk of serious harm to intimate partners" from which it is said that it can be deduced that there is the potential to cause serious harm. The claimant was only released in August 2018 with deportation hanging over him and it was according to the grounds "too soon" to say that he is a changed person. He had not given any evidence of insight but simply compliance with expected behaviours.

24. Points 6, 7, 8 and 9 challenge the finding that he is in fact a refugee. The essential complaint is that the judge, contrary to her self-directions, did not apply **Devaseelan** properly. The decision did not reflect the fact that the first Tribunal had found that the claimant was essentially dishonest and there was "inadequate reasoning" to depart from the previous finding.

25. Point 8 is, I find, the most promising from the Secretary of State's point of view and I set it out below:

> "It is respectfully submitted that the FTTJ errs in their consideration of the arrest warrant at [64]-[69]. The arrest warrant is dated 2001 and the FTTJ fails to consider why it was not before Judge Peart in 2004 and no explanation has been given by the [claimant] for why it was not. It is respectfully submitted that little or no weight should have been placed on this document".

26. Paragraph 9 contends that the claimant could look to the police or other public bodies for protection if required.

27. I confirm that I have directed my mind to the sentencing remarks of the Recorder of London. They are extremely short. The judge acknowledged that there were mitigating factors including the degree of provocation which although not amounting to a defence in law (the appellant was convicted after a trial) when taken in account with other facts in the case was relevant. It was not a premeditated killing but rather had "all the hallmarks of a sudden loss of control". None of that of course, as the Recorder of London was careful to point out, alters the fact that he murdered his wife and the murder was with very considerable violence.

28. Ms Ahmed could not say very much about the decision that the claimant is not a danger to the community. The point is made in the grounds and the fact remains

the claimant's offence, appalling as it was, was an isolated incident. It arose from a particular set of facts and has not been repeated. I appreciate it is not the same test but it is relevant that satisfied the Parole Board that he should have been released; that certainly does not follow automatically after the completion of the twelve years' minimum term.

29. I can find no fault in the decision that the claimant has discharged the burden of dispelling the inference that he is a danger to the community. The judge's finding is based on little from the claimant himself except his ability to keep out of trouble. The judge gave weight to the probation officer's opinion that the claimant would re-establish himself in the community and although it may have been possible to resolve the point differently the judge was entitled to resolve it as she did for the reasons she did.

30. I turn now to the criticisms about the failure to follow **Devaseelan**. They really do not work; the judge's directions were impeccable. Of course, it does not follow that the judge heeded the directions she had given but it is a reasonable assumption unless dispelled by clear evidence. The main reason for allowing the appeal was not what the claimant said because he was discredited but what other people said who were not available last time and that established a link between the family and the political party. Again, this was a matter for the judge and there is nothing unlawful in what she has concluded.

31. There is more merit in the point that one of the documents was criticised for being available but not produced on an earlier occasion. It may be that the judge has not really engaged with this although it is also possible that she did and could not get very far because it was the claimant's evidence that he did not know why it was not available. Even if the judge was wrong about this I cannot see that it displaces the conclusion that was reached. It was part of the reasoning but the bigger part was the evidence believed from the live witnesses or family members who told their own story.

32. I am not persuaded that the lack of explanation for giving any weight to the document that must have been in existence at the time of the earlier hearing if not available to the claimant amounts to a material error. It is at most part of the package of reasoning and the decision is not dependent on it.

33. As was pointed out in argument before me important evidence was just not available before. An important reason for allowing the appeal was the evidence of Mr AD who arrived in the United Kingdom in April 2017 and successfully claimed asylum, or rather was refused asylum but successfully appealed the decision. AD is a relative of the claimant who gave supportive evidence that the judge believed. Paragraph 69 of the Decision and Reasons is particularly clear about this.

34. There is no merit in the contention that the claimant could look to the state of Turkey for effective protection. The state of Turkey is the problem because it is the judge's findings that his return would bring him in contact with the authority or in establishing himself and his history would come to light and that would bring with it the risk of interrogation and it is a very short step from there to persecution which the judge said occurred here.

35. I have stood back and reflected (probably rather too long) on this case. I am very aware of the seriousness of the claimant's offending but I find no error of law in the decision of the First-tier Tribunal which has stood up to the scrutiny that I can give it as encouraged by Ms Ahmed. I dismiss the Secretary of State's appeal.

Notice of Decision

36. The Secretary of State's appeal is dismissed.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24 June 2024