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**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/05740/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 14 October 2015**

**Decision Promulgated
On 21 October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE FROMM

Between

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(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Panagiotopolou, Counsel

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Turkey. He has appealed with the permission of the Upper Tribunal against a decision of Judge of the First-tier Tribunal Cary, promulgated on 28 January 2015, dismissing his appeal against a decision of the respondent to remove him to Turkey, having refused his asylum application.
2. The First-tier Tribunal did not make an anonymity direction but I make

one in order to protect the identity of the appellant.

3. The appellant arrived in the UK clandestinely on 7 January 2013 and he claimed asylum on 16 January 2013. His claim was refused on 24 July 2014. In the reasons for refusal letter, the respondent accepted much of the appellant's account. It was accepted he was a Kurd and it was accepted he had been arrested and detained on two occasions.
4. The core of the appellant's asylum claim was that he came from Gaziantep and his father supported a pro-Kurdish party. The appellant became interested in politics in 2012. While working as a shepherd he assisted members of the PKK by bringing them food and other things they wanted. On 12 September 2012 the appellant's home was raided by *jandarma*, who searched for illegal material and questioned the appellant and his mother about the whereabouts of his father. The appellant was taken to Sakargozu police station, where he was questioned about his contact with the PKK. He was ill-treated during the interrogation. After six hours he was released. On 15 December 2012 the appellant was stopped by *jandarma* while returning from the mountains. They said they knew he had had contact with the PKK and he was ordered to take them to where they were hiding. That night the appellant was taken back to Sakargozu police station for questioning about his father and brother and accused of helping the PKK. The appellant was beaten for 30 minutes. The next day he was released through the intervention of the *mukhtar*. The appellant was told to report every two weeks to give information about the PKK. However, his family arranged for his escape from Turkey.
5. Judge Cary heard the appeal on 23 January 2015 by which time the appellant had turned 18. He heard evidence from the appellant and oral submissions from the representatives. In a detailed and thorough determination he set out the evidence and submissions made to him. At paragraph 33 he noted the respondent accepted the appellant had been arrested and detained on two occasions and that he had attended one BDP meeting. He then reminded himself of the risk categories set out in the case of *A (Turkey) CG* [2003] UKIAT 00034, approved and developed in *IK (Returnees - Records - IFA) Turkey CG* [2004] UKIAT 00312. At paragraph 35 the judge directed himself to first decide whether the appellant was at a real risk of persecution in his home area in consequence of his material history. He went on to note that the respondent accepted the appellant was detained on two occasions and ill-treated. Indeed, the respondent had identified these matters as a potential risk factor together with his Kurdish ethnicity and lack of a Turkish passport. The judge also accepted that, notwithstanding the ceasefire between the Turkish authorities and the PKK which had come into effect at the beginning of 2013, there continued to be ongoing problems between the PKK and the security forces and, in particular, there was evidence of armed clashes despite the ceasefire. The judge found that, as a result, the authorities might still have every reason to investigate and interrogate those who were suspected of involvement

with or assisting the PKK. Even if the police who detained the appellant in 2012 were “rogue officers”, as claimed by the respondent, there was nothing to suggest the appellant might not be at risk from those officers or similar officers were he to return to his home area. The evidence did not suggest it was reasonably likely the Turkish state was able to exercise effective control over all the security forces operating in the appellant's home area.

6. At paragraph 37, the judge concluded that he could not discount the possibility that the appellant may be at risk on return to his home area of Turkey. However, the judge went on to find that the appellant could safely exercise an internal flight alternative within Turkey and he was not therefore entitled to asylum, humanitarian protection or leave on the basis that removing him would breach his human rights.
7. At paragraph 38 the judge accepted that, not having a passport, it was likely the appellant would be detained for interrogation at the point of entry while enquiries were carried out by the authorities. However, that did not mean he was reasonably likely to face torture or degrading treatment as the questioning would be aimed at establishing personal particulars, any criminal record and possible contact with illegal organisation. Absent grounds for suspicion, a person would be released after 6 to 9 hours. Beginning at paragraph 40, the judge considered the evidence of the GBTS system and found there was nothing to suggest there would be any significant adverse information relating to the appellant on the system. The appellant had never been prosecuted and, on both occasions on which he was detained, he was released without charge. The system contained records of arrests, which involved court intervention, as distinguished from the detentions by security forces followed by release without charge. The appellant had never received any official paperwork and it was not reasonably likely that anything adverse have been recorded, particularly if he were the victim of “rogue officers”.
8. At paragraph 43, the judge concluded there was nothing to suggest the appellant's passage through Istanbul Airport would not be relatively straightforward. He went on to say that, even if some additional enquiries were made to the authorities in his local area, he could not see it was reasonably likely that any information would be forthcoming, particularly given the Turkish government's zero tolerance policy towards torture. He found it would not be unreasonable, let alone unduly harsh, to expect the appellant to relocate to Istanbul. He was a fit young man. Whilst he would need to register with the local *mukhtar*, there was nothing to suggest any enquiries made by the authorities in Istanbul were likely to produce any information which would put the appellant at risk of persecution. The judge reminded himself of paragraph 133(13) of *IK* and found the appellant had produced no evidence to suggest there were any written records of his detention. Even if such information were available it was likely the authorities would be prepared to accept the appellant had not after all joined the

PKK and he had travelled to the UK shortly after his last detention. The authorities might well take into account the implementation of the ceasefire since the appellant's departure, even though he acknowledged there had been problems with this.

9. I heard submissions on whether the judge made a material error of law.
10. Ms Panagiotopolou, who had represented the appellant at the hearing in the First-tier Tribunal, argued that the judge's finding in paragraph 44 that the appellant could relocate to Istanbul was unsustainable given the judge's positive finding that the appellant had perceived links to the PKK. She relied on paragraph 120 of *IK*, which states as follows:

“... we have full regard ... to the current guidance of UNHCR, which, so far as we have been informed, does not appear to have changed since the publication of its last official general report in May 2001. Nothing we have said is in our view in any material contradiction to this guidance. It states

“Kurds and members of Christian minorities from southeast Turkey do have an internal flight alternative outside the region unless the case in question is of a prominent nature or is perceived by the authorities to have real or alleged links with the PKK or other main Kurdish parties. UNHCR considers that the group most likely to be exposed to harassment/prosecution/persecution are Kurds suspected of being connected with or sympathisers of the PKK...”

In the context of internal flight “it is essential to find out if Turkish asylum seekers if returned would be suspected of connection to or sympathy with the PKK. In this case they should not be considered as having been able to avail themselves of an internal flight alternative” ... in the UNHCR’s perspective, if persecution emanates from state authorities then there is no internal flight alternative or relocation. The situation may look different with regard to village guards or people persecuted by non-state agents.”

11. Ms Panagiotopolou submitted that the judge's conclusion that the appellant could exercise an internal flight notwithstanding his positive finding was perverse in the light of the background information. She submitted there was also error in paragraph 44 regarding speculation on the part of the judge as to what the authorities would think. There was further speculation about the ceasefire.
12. Mr Tarlow relied on the rule 24 response. He argued that, in essence, the issue was whether the appellant would be perceived by the authorities of having links to the PKK. He argued that the finding made by the judge in paragraph 44 was open to him to make in the light of the finding that the appellant was released without charge or judicial enquiry and there would therefore be no records on the GBTS system. He argued the judge had directed himself in accordance with the guidance given in *IK* and was right to find that internal relocation to Istanbul was safe and viable. He argued that the decision was sound and the grounds were nothing more than a disagreement with the decision.

13. Ms Panagiotopolou clarified that she accepted there would be no records of the appellant on the GBTS system. However, on further investigation, the airport authorities would discover from the local area that the appellant had been suspected of having links with the PKK. He was fingerprinted and photographed. He had been detained twice and he had a family history of connection to pro-Kurdish parties. This would trigger the risk.
14. I reserved my decision on the question of whether the judge made a material error of law.

Error of law

15. Plainly the judge was familiar with the country guidance given in *IK*. However, having carefully considered the submissions made to me, I find that he did not properly apply it in this case and therefore his decision contains a material error of law. At paragraph 118, the Tribunal in *IK* stated as follows:

“In general terms however we consider that one should proceed, when assessing the viability of internal relocation, on the basis that an individual's material history will in broad terms become known to the authorities at the airport and in his new area when he settles, either through registration with the local Mukhtar or if he comes to the attention for any reason of the police there. The issue is whether that record would be reasonably likely to lead to persecution outside his home area.”

16. In this case, the judge accepted the appellant's account of past persecution in his home area and reasoned that it was not reasonably likely that material records were kept so as to place the appellant at a real risk on return. He was correct to find there would be no record on the GBTS system. However, the issue was whether local records would be kept which would trigger risk once enquiries were made there. Of course, paragraph 118 of *IK* is only general guidance. However, the starting position must be that the appellant's history would in broad terms become known to the authorities at the airport or in his new home area, in this case notionally Istanbul. Furthermore, paragraph 120 shows that the Tribunal found that Kurds with perceived links with the PKK would not be able to exercise internal flight. The Tribunal made it clear in that paragraph that the country guidance it was providing was consistent with the views of the UNHCR as set out in the extract.
17. As said, the judge relied on paragraph 133(13) of *IK*, in its summary of generic conclusions, which reads as follows:

“The risk to a specified individual in most circumstances will be at its highest in his home area for a variety of reasons, and particularly if it is located in the areas of conflict in the south and east of Turkey. Conversely the differential nature of the risk outside the area may be sufficient to mean that the individual would not be a real risk of persecution by the state or its agencies elsewhere in Turkey, even if they were made aware of the thrust of the information maintained in his home

area by telephone or fax enquiry from the airport police station or elsewhere, or for a transfer of at least some of the information to a new home area on registration with the local Mukhtar there. Internal relocation may well therefore be viable, notwithstanding the need for registration in the new area. The issue is whether any individual's material history would be reasonably likely to lead to persecution outside his home area."

18. I agree with Ms Panagiotopolou that this paragraph must be read with the earlier paragraphs set out above and the position of a person known or perceived in his local area to have links to the PKK would be at risk throughout Turkey. The judge assessed whether there would be records in existence in the home area which would be passed on to anyone making enquiries but his conclusion that there would not did not take full account of the country guidance. He appears to have overlooked the fact the appellant was fingerprinted and photographed. It is unclear why the fact the officers who beat him up were acting outside their authority and in defiance of Turkey's zero-tolerance policy would mean it was less likely that records were kept. In the eyes of the authorities the appellant's detention was justified because of his perceived links to the PKK. Nor does the fact the appellant was only detained for relatively short periods and released without charge mean there is necessarily less likelihood of records being kept. The judge did not make an adverse finding regarding the appellant's account of the police visiting his family home after he left Turkey and the fact he had not kept his promise to report after his release.
19. In my judgment, the judge compounded those errors by speculating about what attitude the authorities would take given the appellant had not joined the PKK and had fled abroad. Given the appellant's family background, there is good reason to believe the authorities would continue to regard him with suspicion. Finally, the judge's reliance on the ceasefire as an indicator of the authorities being less likely to maintain an adverse interest in the appellant sits uneasily with his reliance on the breaches of the ceasefire in concluding the appellant would be at a real risk in his home area (see paragraph 36).
20. I do not therefore agree with Mr Tarlow that this is a sustainable decision and the appellant's challenges are nothing more than mere disagreement. The errors are serious and it is plain that they affected the outcome.

Re-making the decision

21. The representatives were in agreement that a finding that the decision of Judge Cary should be set aside would make it appropriate for me to go on to substitute a decision allowing the appeal.
22. The First-tier Tribunal's finding that the appellant is at risk in his home area is not the subject of challenge. It follows from my disagreement with Judge Cary's reasoning on the issue of internal flight and applying

IK that the appellant does not have a safe and viable option of relocating anywhere in Turkey because the authorities are reasonably likely to learn of his perceived links to the PKK as a result of enquiries being made with the authorities in his home area, where he has already been persecuted. Ms Panagiotopolou handed me a bundle of recent reports on the escalation of tension and outbreaks of serious violence in southeast Turkey. This lends further support to the notion that the appellant's perceived links would be likely to lead to a real risk of further persecution.

23. The appellant is a refugee and removing him would breach both the 1951 and 1950 Conventions. He cannot also qualify for humanitarian protection.

NOTICE OF DECISION

The Judge of the First-tier Tribunal made a material error of law and his decision dismissing the appeal is set aside. The following decision is substituted:

The appeal is allowed on asylum and human rights grounds (article 3).

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 15 October 2015

**Judge Froom,
sitting as a Deputy Judge of the Upper
Tribunal**