



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/01949/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 11 July 2017

Decision & Reasons Promulgated  
On 20 July 2017

Before

UPPER TRIBUNAL JUDGE WARR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AG

(ANONYMITY DIRECTION MADE)

Respondent

**Representation:**

For the Appellant: Mr D Clarke, Home Office Presenting Officer

For the Respondent: Ms A Patnya, Counsel, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the appeal of the Secretary of State but I will refer to the original appellant, a citizen of Turkey born in 1997, as the appellant herein.
2. The appellant left Turkey in February 2013 and travelled in a lorry arriving in the UK on 20 February 2013. He was fingerprinted in Austria en route. He applied for

asylum on 4 March 2013. This application was refused but he was granted discretionary leave to remain until 14 September 2016. An appeal against the decision was dismissed by First-tier Judge Boyes on 19 May 2014. The appellant submitted a further application for leave to remain on 16 August 2016. This application was refused on 3 February 2017 and gives rise to the appeal proceedings herein.

3. The Secretary of State in the refusal decision referred to **Devaseelan [2004] UKIAT 00282** and noted that the findings of Judge Boyes were the starting point for considering any further evidence. In paragraph 16 the respondent summarised the conclusions of Judge Boyes as follows:

“You were found to be broadly credible, Judge Boyes accepting that you:

- a) are a Kurdish as claimed
- b) that you were detained for a period of 24 hours or less on 4 October 2011 and ill-treated as claimed
- c) that you were stopped and questioned about the PKK on several further occasions
- d) that you were not a member of the BDP but had distributed leaflets, posters and flags.”

4. In paragraph 17 of the letter the respondent noted that Judge Boyes had not accepted

- (a) that the appellant’s father disappeared in the manner claimed,
- (b) that the appellant did not know his brother’s whereabouts,
- (c) that the appellant’s father had any involvement with any Kurdish political parties,
- (d) that the appellant’s older brothers were arrested, detained and tortured as claimed,
- (e) that the appellant’s detention was in relation to distributing leaflets for the BDP,
- (f) that the appellant was sentenced in absentia as claimed.

5. The respondent noted that the appellant had not appealed the finding of Judge Boyes and there were no substantial grounds for believing that the appellant would be of interest to the Turkish authorities for either membership or high profile support for the PKK, BDP or HDP. Although those of Kurdish ethnicity might face some

unequal treatment or discrimination this did not reach the level of persecution under the 1951 Convention and the claims did not engage Articles 3 or 8. The appellant could not meet the requirements of Appendix FM.

6. The appellant appealed the decision and his appeal came before a First-tier Judge on 23 March 2017. At the hearing Counsel sought an adjournment on the basis of a recent handwritten letter from the appellant's cousin which had not been translated but an application to adduce this material or adjourn the proceedings was not permitted.
7. The appellant relied on his witness statement before the First-tier Judge. It was the appellant's case that the situation in Turkey had significantly deteriorated for the worse and that President Erdogan and his ruling party were trying to gain more power in Turkey. Reference was made to the attempted military coup in Turkey which had been seen worldwide. The appellant was now of military service age and had a genuine fear of return. He did not want to serve in an army who on a daily basis continued to commit atrocities against the Kurds. His family had received a letter from the military service stating he was now registered as an absconder and if returned to Turkey he would be severely punished. He had participated in many Kurdish projects in the United Kingdom. He would not be able to internally relocate within Turkey as he would be required to register with the local Mukhtar wherever he moved to. In cross-examination the appellant said that the President had taken draconian measures against the Kurds and many HDP leaders were now in jail and for Kurds Turkey was now a place of oppression and brutality. His mother and younger brother continued to reside there together with a number of aunts and an uncle. The appellant did not wish to undertake national service in Turkey and join the military force that was brutal against his own ethnic group.
8. Having correctly addressed himself on the burden and standard of proof the First-tier Judge considered the case of Devaseelan and stated in paragraph 46 of his decision:

"... In light of the evidence now available before the Tribunal, and in light of recent events in Turkey subsequent to the First-tier Tribunal's determination issued in May 2014, I find that there is a proper evidential basis upon which to depart from the Tribunal's earlier findings in May 2014 in relation to risk on return to Turkey, and which cause me to conclude that the appellant is a credible witness and who faces a genuine risk of persecution and/or ill-treatment if returned to Turkey, based primarily upon significant changes within the last twelve months in the political and security situation in Turkey, especially in relation to the treatment of Kurds generally."

The judge accepted in paragraph 47 of his decision that the appellant had provided credible evidence of actual and/or imputed political opinion in connection with his Kurdish ethnicity. There had been a number of positive credibility findings made by Judge Boyes and since that decision there had been "comprehensive and widespread

objective evidence that the political and security situation in Turkey has worsened, with significantly increased powers of the security services.”

9. The determination concludes as follows:

- “49. These developments have been widely reported in the international media. I have considered this objective evidence. Both Kurdish activists and supporters are continuing to be arrested and detained including BDP and HDP activists and protesters. I also accept there is objective evidence referred to in the objective bundle indicating waves of detentions together with large-scale arbitrary detentions now being commonplace. In addition, anti-terror laws are routinely misused with countless unfair criminal prosecutions under vague antiterrorism laws.
50. The objective bundle at pages 1 and 5 expresses concerns of torture and ill-treatment but in particular in relation to detention, both official and unofficial, with insufficient steps being taken to carry out efficient investigations. Page 11 of the objective bundle quotes an Amnesty International report stating that the coup ‘unleashed appalling violence’ with an ‘onslaught on Turkish towns and neighbourhoods, including around-the-clock curfews’.
51. I consider the above political and security developments to be significant and to have materially exposed and raised the appellants risk profile, as a Kurd, were he to be returned. Indeed, the 2014 determination, when considered as a whole, did not suggest at any stage that the appellant could not be considered as credible witness, and indeed for the most part all aspects of his claims were accepted, as detailed above, determination finding the appellant had failed to demonstrate aspects of his claim to the requisite standard. I find however that the appellant has now demonstrated, to the lower standard of proof, that in light of recent events in Turkey, his risk profile has increased significantly.
52. I have considered the letter provided by the appellant from the military services, a translated copy of which appears at page 6 of the bundle. Whilst Miss Sharma noted that it was curious that there had been no follow-up letter issued to the appellant subsequent to May 2016, it was not suggested outright that this was simply a fraudulent or forged document and that no weight could be placed upon it.
53. When applying the principles in **Tanveer Ahmed**, and when assessing the evidence in the round, I do give this documentary evidence some evidential weight, and I accept the appellant is now of military age and that is likely to be perceived as a draft evader. I attach no evidential weight to the letter provided by the appellant at the appeal hearing, dated 5 March 2017, which was untranslated.

54. In assessing the risk on return, I have considered the decision in **IA (Turkey) [2003] UKAIT 00034 as confirmed in IK (returnees-records-IFA turkey CG [2004] (UKIAT 00312)**. I accept that the majority of the factors set out in **IA (Turkey)** are relevant to the appellants appeal, including the level of the appellants known or suspected involvement with a separatist organisation and his questioning about supporting the PKK. Such factors include whether the appellant has ever been arrested or detained and if so in what circumstances and whether circumstances of past arrests and detentions indicate the authorities viewed the appellant as a suspected separatist.
55. Further factors I have considered are the degree of ill-treatment which the appellant has been subject to in the past and whether the appellant has been charged or placed on any reporting conditions. I accept that the appellant is now considered to be a draft evader and that he will have family connections with separatist organisations through family members. I also accept the appellant is Kurdish and that he has an expired passport. I also accept the appellant risk profile is such that he is highly likely to be questioned by the authorities on return as an identified failed asylum seeker.
56. The case suggests the appellant is likely to be transferred to a police station where he will be interrogated for several hours. The fact he will be required to undertake compulsory military service is a further risk factor which is likely to appear on the Turkish GBTS computer system (Home Office CIG guidance March 2016 paragraph 28).
57. I have also noted that paragraph 47 of **A (Turkey)** observed in the Upper Tribunal that the existing prescribed human rights context overall is always a matter of significance when considering these relevant factors. In all the circumstances, I therefore conclude that the appellant is a genuine refugee in need of urgent international protection.”
10. Accordingly the judge allowed the appeal on asylum and human rights grounds. The Secretary of State applied for permission to appeal relying on **IK (Returnees - Records - IFA) Turkey CG [2004] UKIAT 00312**. The appellant fell squarely within the category of “local ne’er-do-well” identified in paragraphs 116 and 120 of **IK**. The judge had erred when considering internal relocation. The judge had erred in finding that the situation in Turkey had worsened since 2014. The case of **IK** was still good law and had been decided in 2004 “in a period of time when the situation in the South East of Turkey was arguably worse than now.” In any event there would have to have been substantial evidence of a durable change to go behind **IK**. Permission to appeal was refused by the First-tier Tribunal. Permission was renewed. The Upper Tribunal granted permission on 31 May 2017. The reference to the deterioration of the situation in Turkey since 2014 was

“explicable by the fact that the appellant had an earlier appeal on asylum grounds which was dismissed in that year. It was therefore appropriate for the judge to consider whether there was reason to depart from the judge’s findings in that earlier appeal (in accordance with Devaseelan).”

11. The Upper Tribunal Judge, however, considered that the remainder of the grounds were arguable. It was arguable that the judge had failed to consider the level of the appellant’s involvement with the PKK and whether the authorities’ interest in him in his home area was based only on his position as a Kurd. It was arguable that the judge had failed to have regard to what was said in IK and to consider whether the appellant would be at risk elsewhere in Turkey. Insofar as the judge intended to depart from the decision in IK he had arguably failed to consider whether the change in the country situation amounted to a durable change.
12. At the hearing Mr Clarke relied on DSG (Afghan Sikhs: departure from CG) Afghanistan [2013] UKUT 00148 (IAC).
13. At paragraph 20 of the decision the Tribunal set out the relevant parts of the Practice Direction to the effect that country guidance cases

“shall be treated as an authoritative finding on the country guidance issue identified in the determination, based upon the evidence before the members of the Tribunal, the AIT or the IAT that determine the appeal. As a result, unless it has been expressly superseded or replaced by any later ‘CG’ determination, or is inconsistent with other authority that is binding on the Tribunal, such a country guidance case is authority in any subsequent appeal so far as that appeal: -

- (a) relates to the country guidance issue in question; and
- (b) depends upon the same or similar evidence.”

14. The Tribunal went on to cite extracts from the Immigration and Asylum Chamber Guidance Note of 2011 No 2 from paragraphs 11 and 12 as follows:

“If there is credible fresh evidence relevant to the issue that has not been considered in the country guidance case or, if a subsequent case includes further issues that have not been considered in the CG case, the judge will reach the appropriate conclusion on the evidence, taking into account the conclusion in the CG case so far as it remains relevant.

Where country guidance has become outdated by reason of developments in the country in question, it is anticipated that a Judge of the First-tier Tribunal will have such credible fresh evidence as envisaged in paragraph 11 above.”

15. Mr Clarke submitted that the judge had departed from the country guidance case of **IK** with no reasons given. As **DSG** made clear (referring to SG (Iraq) [2012] EWCA Civ 940), country guidance determinations should be followed “unless very strong grounds supported by cogent evidence” are adduced, justifying their not doing so.
16. Reliance was placed on paragraphs 116 to 119 of **IK**. The proper approach was to decide first whether an individual had a well-founded fear of persecution in his home area where the risk would be highest for a variety of reasons. In the home area a specific gendarme might have it in for an individual whom he considered to be a local “ne’er-do-well”.
17. The judge had given his reasons for departing from **IK** in paragraph 46 of the decision. The judge had referred to the positive findings made by Judge Boyes but had not mentioned the negative findings. Mr Clarke submitted the findings were largely adverse. The appellant had established no significant profile. It was odd that the judge had said that Judge Boyes had not suggested at any stage that the appellant could not be considered as a credible witness. No reasons had been given for saying that the appellant’s risk profile had increased significantly. In paragraph 54 the judge had considered the risk factors set out in **IA** which Mr Clarke accepted were relevant and should be taken into account. The appellant had been held for 24 hours. Reasoning had not been given to support the finding that the appellant had family connections with separatist organisations through family members. There was nothing to support the finding that a low profile returnee who had been arrested and with no PKK connections would be at risk. The points relied on were not sufficient to depart from the country guidance. Reference should have been made to the differential risk outside the home area as distinct from the risk in the home area as set out in the case of **IK**. The appellant could not make out a case based on an objection to undertake compulsory military service in the light of **Sepet & Bulbul [2001] EWCA Civ 681**. Mr Clarke accepted that the appellant would be found to be a draft evader. The judge had given no reasons why **IK** should not apply to the appellant and the determination should be set aside.
18. Counsel submitted that there had been no challenge to the positive credibility assessment. The judge had properly founded his decision on the basis of changes in the country situation since 2014 when the appellant’s appeal had been determined by Judge Boyes. There had in fact been no departure from the country guidance to which the judge had made reference in paragraph 54 of his decision. The judge had referred at paragraph 56 to the country guidance suggesting the appellant was likely to be transferred to a police station. The country guidance had not established a “two stage test” when dealing with internal relocation. The claim involved fear of persecution from the state authorities. Reference was made to Counsel’s skeleton argument. **IK** did not establish fixed risk categories. There needed to be a fact-specific approach. While normally an assessment should start with risk in the local area it was sufficiently clear from the determination that the judge had found that the appellant would be at risk given what he had said in paragraph 54 about the risk factors in **IA (Turkey)**. There had been a change in the appellant’s position in that he

had now been found to be a draft evader. The appellant had said he had not wished to serve in the army under a repressive regime. The appellant was not just a person who had been rounded up in a mass clearance. The judge had not materially erred in law when taking into account the risk factors. He had made a specific risk assessment. He was not simply a local ne'er-do-well.

19. As a secondary or alternative submission the appellant would be at risk on return as found by the judge in paragraph 56 of his decision. He would be transferred to a police station before being interrogated and required to undertake compulsory military service.
20. Mr Clarke submitted that the appellant's profile had not changed and no findings had been made about whether the appellant's oral evidence was credible. The question was whether the appellant had a well-founded fear in his home area.
21. At the conclusion of the submissions I reserved my decision.
22. I have carefully considered all the material before me.
23. The first point to note is that the respondent submitted that the judge had erred in considering the change of circumstances since May 2014 when the country guidance in question dated from 2004. The reference to May 2014 is of course a reference to the date of the previous decision and the judge needed to assess the circumstances and any change in the position since that time. The judge found in paragraph 46 that there was a proper evidential basis upon which to depart from the Tribunal's earlier findings in May 2014 in relation to risk on return to Turkey.
24. As Counsel submitted, the judge did not depart from the country guidance, but applied it.
25. I was referred to **DSG (Afghanistan)** by Mr Clarke. It was in fact the position of the Presenting Officer (Mr Deller) "that country guidance cases were not set in stone" – the country guidance in that case was acknowledged to be "a comparatively elderly authority albeit still country guidance". But nevertheless good reasons were needed to depart from such a case. The Tribunal in that case indeed did depart from the country guidance and accepted the point made by Mr Deller that country guidance cases were not set in stone – see paragraph 26 of the decision. That did not amount to "carte blanche for judges to depart from country guidance" since it was necessary to show why such guidance did not apply to the case in question under the Practice Direction.
26. I accept that the judge did consider and apply the country guidance. He makes reference in paragraph 57 of his decision to what was said in paragraph 47 of **A (Turkey)**. As the judge had said, the existing political and human rights context overall was also a matter of significance. The Tribunal had also commented that the



specific risk factors it had enumerated should not be treated as some kind of check list. Assessment of the claim had to be in the round.

27. The summary of the generic conclusions are set out in paragraph 133 of **IK**. The Tribunal sets out its findings in a non-prescriptive fashion. For example in paragraph 12 of the guidance it does not state that it is always appropriate to consider first the issue of whether the appellant is at risk in his home area.
28. Mr Clarke sought to raise credibility issues – reference had been made it was said to the positive credibility findings in the previous determination but not the negative ones. The findings it was claimed were largely adverse. This argument does not appear to feature in the grounds. It is a difficult argument to sustain for two reasons: one is that the respondent in paragraph 16 of the refusal letter says that the appellant was “found to be broadly credible” and the second is that the judge was fully conscious of the matters where Judge Boyes had not accepted the appellant’s account and sets them out in paragraphs 19 (last three sentences) and 20 of the determination. Accordingly even if the point had featured in the grounds, it has no merit. As counsel says there was no credibility challenge in the grounds. The particular appellant has already experienced detention and ill-treatment at the hands of the police and the judge’s findings which are not the subject of challenge is that the appellant will soon after arrival be transferred to a police station for interrogation. The judge accepted that the appellant had been detained for 24 hours or less on 4 October 2011 and that he had been ill-treated and beaten as a consequence of which he had scars on one of his arms and shoulder. In paragraph 67 of his decision Judge Boyes, referring to the beating, stated:

“It is deeply shocking that a child of around 14 years of age would be treated in such a way by the Turkish authorities. He was beaten and rough-handled, and as a consequence of this was bruised and bleeding and had cuts on one of his arms and shoulder.”

29. Since that time the First-tier Judge accepted that the appellant had evaded military service. Matters had moved on since the previous decision. The appellant would on the judge’s findings again end up in the hands of the police as a draft evader. I accept the submission that the appellant was more than a local ne’er-do-well and the judge properly had regard to past ill-treatment in paragraph 55 of his decision. The judge refers in paragraph 54 to relevant factors including whether the appellant had ever been arrested or detained. In paragraph 55 he refers to the degree of ill-treatment the appellant had been subjected to. Such treatment may be a relevant factor bearing in mind paragraph 339K of the rules:

“339K. The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person’s well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.”

The appellant would, as argued in counsel's further or alternative submission, face risk on return at the hands of the authorities and questions of differential risk in or outside the home area would not be relevant.

30. I do not find that when the determination is read as a whole that the judge materially erred in law in concluding that the appellant would be at risk on return for the reasons he gives.
31. Accordingly the appeal of the Secretary of State against the judge's decision is dismissed. The decision of the judge to allow the appeal on asylum and human rights grounds (Articles 2 and 3) is confirmed.

**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 his 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.

**TO THE RESPONDENT**  
**FEE AWARD**

The judge made a fee award in the sum of £140 which is confirmed.

Signed

Date 18 July 2017

G Warr, Judge of the Upper Tribunal