IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2024-004261

First-tier Tribunal No: PA/01189/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 30 December 2024

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

CA
(Anonymity Order made)

Respondent

Representation:
For the Appellant: Ms S Cunha, Senior Home Office Presenting Officer
For the Respondent: Mr B Hawkin, instructed by Kreston Solicitors

Heard at Manchester Civil Justice Centre on 17 December 2024

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal which allowed CA's appeal, in part, against the respondent's decision to refuse his protection and human rights claim.

2. For the purposes of this decision, I shall hereinafter refer to the Secretary of State as the respondent and CA as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

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3. The appellant is a citizen of Turkey born on 14 February 2006. He entered the UK illegally on 9 October 2022 and claimed asylum on 12 October 2022. His claim was refused on 29 August 2023 and he appealed against that decision.

4. The appellant's claim can be summarised as follows. He claimed to be of mixed ethnicity; his father was Turkish and his mother was Kurdish. He claimed to have been bullied, discriminated against and assaulted on account of his Kurdish ethnicity when he was at school. He claimed in his asylum interview to have been assaulted on two separate occasions, although he did not mention that in his witness statement. He was attacked by people at his school on the first occasion and required stitches. He was assaulted a second time a year later when he was on his way to class, in a different school, and again required stitches for his injuries. He feared returning to Turkey.

5. The respondent, in refusing the appellant's claim, accepted that he was of mixed Kurdish ethnicity but did not otherwise accept any of his account, either of discrimination or of being assaulted, owing to inconsistencies in his evidence. The respondent considered that the appellant could return to Turkey and continue with his everyday life unimpeded because he spoke Turkish and had a Turkish name. The respondent considered that there was a sufficiency of protection from the authorities in Turkey in any event, and that the appellant could safely and reasonably relocate to another part of Turkey such as Istanbul where there was a significant Kurdish population. The respondent considered that the appellant would not be at risk on return to Turkey and that his removal there would not breach his human rights. He did not meet the requirements of the immigration rules on family and private life grounds and there were no exceptional circumstances outside the rules justifying a grant of leave on Article 8 grounds.

6. The appellant appealed against the respondent's decision. His appeal was heard in the First-tier Tribunal by Judge Meyler on 25 July 2024. The appellant gave oral evidence before the judge. His brother and uncle also appeared before the Tribunal. The judge noted that, whilst the appellant had produced some photographs of scars on the back of his head and on his eyebrow, there was no mention of any assault in his witness statement or in a report from an independent social worker which had been produced for the hearing. Further, the judge noted the absence of any reasons for the appellant being singled out for assault as a Kurd when, according to his own evidence, neither his brother nor his Kurdish friends had had such experiences. The judge did not, therefore, accept that the appellant had been assaulted on racially motivated grounds. The judge considered that any discrimination the appellant faced as being of Kurdish ethnicity did not amount to persecution and she considered that on return to Turkey he would not be going back to school and would therefore not be obliged to remain in an environment where he was subjected to discrimination. The judge found that the appellant was not politically active in Turkey, that he had no significant profile in the UK and that there were no actual or perceived political activities abroad, and she concluded that he had failed to show, based on his own history and profile, that there was a reasonable degree of likelihood that he would be persecuted or face a real risk of serious harm on return to Turkey. She did not, therefore, accept that the appellant had a well-founded fear of the Turkish authorities.

7. The judge, however, noted that the appellant's brother had made an asylum claim in the UK which was still outstanding. His claim was that he was a member of the HDP and had been arrested by the authorities on more than one occasion due to his political activities in Turkey. She considered that if the appellant's brother had a well-founded fear of the authorities, then it was possible, as per the country guidance, that the appellant was also at risk, depending on his brother's profile and other factors. She

considered that she was unable to determine the appellant's brother's claim as it was not before her, and that he had not even been interviewed yet. As such, she considered that it was inappropriate for her to make findings in relation to his case. She was not asked to, and did not, adjourn the appellant's appeal pending the determination of his brother's claim, and neither was the respondent proposing to withdraw the decision in the appellant's claim in the meantime. She found, in the circumstances, that it would be disproportionate to remove the appellant whilst his brother's claim remained pending and that he should be granted a period of leave to remain in the UK until his brother's claim was finally determined. She accordingly allowed the appeal on Article 8 grounds in a decision promulgated on 16 August 2024.

8. The respondent sought, and was granted, permission to appeal to the Upper Tribunal on the grounds that the judge had made a material misdirection of law in placing determinative weight on an absence of evidence to allow the appeal under Article 8 and that the appeal had been allowed on an improper basis.

9. Mr Hawkin produced a rule 24 response opposing the appeal and submitted that the judge's decision was open to her on the evidence.

10.The matter then came before me at a hearing. Mr Hawkin advised me that the appellant's brother had since been granted refugee status, on 11 December 2024. Both he and Ms Cunha made submissions before me.

11.Ms Cunha submitted that the judge had failed to undertake the usual Article 8 assessment as per the guidance in Razgar, R (on the Application of) v. Secretary of State for the Home Department [2004] UKHL 27, having made no findings as to whether Article 8 was engaged on family and private life grounds and having failed to undertake a proper proportionality assessment. The Secretary of State was left without any real understanding as to why the appeal had been allowed, contrary to the principles in MK (duty to give reasons) Pakistan [2013] UKUT 641. The reasons given by the judge for allowing the appeal were perverse. The decision ought therefore to be set aside and the decision re-made by dismissing the appeal, without the need for a further hearing. Ms Cunha said that, given the unusual circumstances arising in this case, however, she would not object to any cross-appeal being made now by the appellant.

12.Mr Hawkin submitted that it was clear why the judge had allowed the appeal, namely that there was a possibility that the appellant would be at risk on return on the basis of his brother's case, in line with the country guidance in IA (Turkey) CG [2003] UKIAT 00034. He submitted that the judge had been correct not to adjourn the appellant's appeal for what could have been an indeterminate period of time awaiting the decision in his brother's claim, and that she had followed the correct approach in the circumstances. Although the judge had not made a specific finding it was clear that she considered Article 8 to have been engaged on private life, if not also family life, grounds and that the appellant's removal would be a disproportionate interference where there was a possibility that he would be at risk because of his brother's activities. The judge had the appellant's brother's statement before her setting out his claim and the fact that he had now been granted refugee status underlined the lawfulness of her approach. It was now up to the Secretary of State to reconsider the appellant's case in the light of the grant of refugee status to his brother. In response to my enquiry about disposal in the event that I found that the judge had erred in law and set aside her decision, Mr Hawkin submitted that the case should be remitted to the First-tier Tribunal for all matters to be considered afresh in light of the grant of refugee status to the appellant's brother.

13.In response, Ms Cunha submitted that the appellant's brother's witness statement said very little and that even if the judge had considered the statement, she had failed to address the inconsistent assertions therein as she had found that the appellant was not at risk contrary to the claim in the statement. The judge had allowed the appeal under Article 8 on a basis which was inconsistent with a proper Article 8 assessment. The decision should be re-made by dismissing the appeal and it was for the appellant to then make further submissions to the Secretary of State.

Analysis

14.Like Ms Cunha, I find that Judge Meyler's approach in allowing the appellant's appeal under Article 8 was erroneous in law, if not perverse. The approach she followed was essentially to use Article 8 as an alternative to an adjournment in circumstances in which it was entirely inappropriate to do so. She did not undertake a proper Article 8 assessment, making no findings as to whether Article 8 was even engaged. Instead she went straight on to consider proportionality on what was a singular and purely speculative basis, without undertaking the required balancing exercise assessment. Indeed, not only was it speculative, but it was also contrary to her own finding that the appellant was not at risk on return to Turkey and, as Ms Cunha submitted, was inconsistent with the evidence before her.

15.It is not clear to me if the appellant's brother gave any oral evidence before the judge. Ms Cunha submitted that he was not even at the hearing but that does not seem to be correct as the judge referred to him at [8] as being in attendance. The suggestion at [8] is that the appellant's brother and uncle gave oral evidence before the Tribunal but that is not entirely clear from the phraseology in that paragraph. In any event the judge made no reference to any oral evidence from witnesses other than the appellant in any other part of her decision. The only other evidence from the appellant's brother consisted of his two statements which appeared in the appellant's supplementary appeal bundle, at pages 271 and 286 of the consolidated bundle and which, as Ms Cunha submitted, provided an account which was inconsistent with the appellant's evidence and with the judge's own findings. The statements referred to the appellant's brother, as well as the appellant, being in danger due to their political affiliations and supporting the HDP. The statement at page 271 referred to the appellant's brother having been arrested twice, and the statement at page 286 referred to the appellant being a strong supporter of the HDP. However the appellant had made no such assertions himself, either in relation to his own activities/ affiliations (consistent with the judge's findings at [38]) or in relation to his brother's activities. Indeed the appellant made no mention of his brother having faced any problems in Turkey, in any of his interviews and statements, but rather, had said in his interview (question 97), as the judge recorded at [30], that the most his brother suffered was discrimination and verbal abuse.

16.In such circumstances it was entirely inappropriate and improper for the judge to use Article 8 in the way that she did. What she was required to do was to make a decision on the evidence which was before her. The appellant's brother's case was not before the judge and indeed his brother's activities had never been part of his own claim. Even if his brother were to be granted refugee status (as he now has), that did not mean that the appellant automatically qualified himself, particularly as he had never previously claimed to be at risk owing to his brother's activities. The judge gave full and cogent reasons for concluding, on the evidence before her, that the appellant was not at risk on return to Turkey. Her findings in that regard have not been challenged by the appellant and remain unchallenged, despite Ms Cunha offering him

an opportunity to cross-appeal at the hearing before me. The judge's decision, to allow the appeal on Article 8 grounds, was accordingly devoid of proper reasoning and was legally erroneous. Accordingly I set aside her decision in that respect.

17.There was some discussion at the hearing about the appropriate method of disposal of the appeal in the event that I set aside the judge's decision. Whilst Mr Hawkin maintained that Judge Meyler's decision should be upheld, it was his view that, in the event that I found against him, the entire case should be considered afresh in the First-tier Tribunal with the question of risk on return being re-assessed on the basis of the implications for the appellant of the grant of refugee status to his brother. He accepted that that would have to be in the context of an Article 8 assessment but he considered that it was relevant to the appellant's right to physical and moral integrity under Article 8. However I agree with Ms Cunha that that would not be a proper approach. As already mentioned, there was no cross-appeal by the appellant despite the opportunity provided by Ms Cunha, and the judge's findings on risk on return therefore stood unchallenged. In the circumstances it was entirely inappropriate for those findings to be revisited as a *de novo* assessment in the First-tier Tribunal in the manner suggested by Mr Hawkin. Such a course would be to make the Tribunal the primary decision-maker in a new claim. Rather, as I put to Mr Hawkin, and as Ms Cunha also suggested, the appropriate course would be for the appellant to make a fresh claim/ further submissions to the respondent setting out any claim he may have to be at risk on the basis of his connections to his brother, a recognised refugee in the UK.

18.That being the only basis upon which a further hearing was requested for the Article 8 decision to be re-made, and there being otherwise no further material evidence suggested in relation to the appellant's private and family life, I agree with Ms Cunha that the decision should simply be re-made by dismissing the appeal on Article 8 grounds. There was nothing in the evidence to suggest that the appellant's relationship with his brother amounted to family life for the purposes of Article 8. Whilst the appellant may have established a private life in the UK he has only been here for two years and there is no evidence to demonstrate or suggest that there would be any very significant obstacles to his integration in Turkey or any exceptional or compelling circumstances justifying a grant of leave on wider Article 8 grounds. On his own evidence his parents remain in Turkey and there is no reason why he cannot resume his private life in that country on the basis suggested by the judge at [35] of her decision. In the circumstances, the respondent's decision is a proportionate one and does not give rise to any breach of the appellant's human rights.

Notice of Decision

19.The making of the decision of the First-tier Tribunal involved the making of an error on a point of law in relation to the appellant's Article 8 claim. The Secretary of State's appeal is accordingly allowed and First-tier Tribunal Judge Meyler's decision on Article 8 is set aside. Her findings on the appellant's protection claim are otherwise preserved and her decision in that respect upheld. I re-make the decision by dismissing CA's appeal on Article 8 grounds, so that his appeal is dismissed on all grounds.

Anonymity Order

The Anonymity Order previously made is continued.

Signed: S Kebede

Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

18 December 2024