



Neutral Citation Number: [2026] EWCA Civ 349

Case No: CA-2025-000792

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)
UTJ Perkins
UI-2023-000261

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23 March 2026

Before :

LORD JUSTICE PETER JACKSON
LORD JUSTICE ARNOLD
and
LORD JUSTICE DOVE

Between :

KD

Respondent/
Claimant

- and -

SECRETARY OF STATE
FOR THE HOME DEPARTMENT

Appellant/
Defendant

Zane Malik KC (instructed by the Treasury Solicitor) for the Appellant
Jennifer Lanigan (instructed by Virgo Solicitors) for the Respondent

Hearing date : 25 February 2026

Approved Judgment: KD (Turkey)

This judgment was handed down remotely at 10.30am on 23 March 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Peter Jackson :

Overview

1. This is an appeal by the Secretary of State for the Home Department from a decision of the Upper Tribunal ('UT') to uphold a decision of the First-tier Tribunal ('FtT') to allow an appeal from the refusal of a claim for asylum and humanitarian protection.
2. This is the second set of proceedings in respect of the respondent, KD. The first proceedings ended over twenty years ago, when an appeal based on his asserted fear of political persecution was firmly dismissed by a tribunal. However, KD remained in the United Kingdom unlawfully, and in the following year he murdered his wife. Fourteen years later, after being released from prison, he made a further asylum claim on the same ground (political persecution), and a new claim that his human rights would be breached if he were to be returned to his home country because of the risk to him from an alleged blood feud caused by the murder. These claims were rejected by the Secretary of State, but on KD's appeal to the FtT the claim of political persecution succeeded. The existence of a blood feud was also accepted, but the corresponding human rights claim was left undetermined. The Secretary of State's appeal to the UT was therefore dismissed, with the result that KD, a foreign criminal who has been in this country unlawfully for 25 years, could not be deported. The Secretary of State now appeals to this court.
3. I would allow the appeal on the basis of errors of law by the FtT that went uncorrected by the UT. I would set aside all findings of the FtT and dismiss the asylum claim and the human rights claim based on political persecution, but because the human rights claim based on blood feud was left undetermined I would remit it to the UT for expedited consideration.

Background

4. KD is a citizen of Turkey, now aged 54. He arrived clandestinely in the United Kingdom in a lorry on 19 August 2001, accompanied by his wife. He claimed asylum on the basis of his Kurdish ethnic origin and his Alevi Muslim faith, and on the basis that he was a supporter of DHKP-C, a party allegedly associated with the PKK. Both organisations are illegal in Turkey. DHKP-C is listed as a terror organisation by the EU, and the PKK has since March 2001 been a proscribed terrorist organisation in the United Kingdom.
5. On 2 October 2001, the Secretary of State refused the asylum claim. It was not accepted that KD's ethnicity or religious faith demonstrated a well-founded fear of persecution. As to political activity, it was said that KD feared prosecution, not persecution. His account of detention and ill-treatment was said to be lacking in credibility. His claim for humanitarian protection under Articles 2 and 3 ECHR was also refused. Removal directions were given.
6. KD and his wife (whose claims had also been refused) appealed on asylum and human rights grounds. The appeals were heard by the adjudicator, Judge Peart, at a two-day hearing at which KD was represented by counsel and at which he and his wife gave evidence. In a determination promulgated on 29 September 2004, their appeals were

- dismissed. In a detailed judgment, their accounts of political activity, detention and ill-treatment were rejected and their claims were described as fraudulent.
7. By February 2005, KD's appeal rights were exhausted, but he and his wife did not leave the United Kingdom and they remained here unlawfully.
 8. In December 2005, KD killed his wife by stabbing her multiple times in a fit of jealous rage. She was 23 years old. In December 2007, he was convicted of murder at the Central Criminal Court, the jury having rejected his plea of diminished responsibility. He was sentenced to life imprisonment with a minimum term of 12 years. The Recorder of London described the offence as having involved very considerable violence.
 9. In December 2016, the Secretary of State notified KD that he was liable to be deported on release from prison. In the same month he made fresh asylum and human rights claims.
 10. In May 2018, KD appeared before the Parole Board. It received assessments from his offender supervisor, a prison psychologist and his offender manager. These variously stated that he was in the group of offenders with a low likelihood of general or violent re-offending, but that he posed a high (June 2017) or medium (April 2018) risk of causing serious harm to others, specifically intimate partners, if he did reoffend.
 11. In June 2018, KD was sent a 'Section 72' letter (see below) in which he was asked to rebut the presumption that the crime he committed was particularly serious and that he was a danger to the community. His representatives replied.
 12. In August 2018, KD was released from custody under supervision by the Probation Service.
 13. On 23 January 2019, the Secretary of State informed KD that his asylum and human rights claims had been refused, and he was served with notice of a decision to make a deportation order. The grounds for refusal were that:
 - 1) It was certified under s.72 of the Nationality, Immigration and Asylum Act 2002 ('NIAA 2002') that the crime he committed was particularly serious and that he was therefore excluded from protection, pursuant to Article 33(2) of the 1951 Refugee Convention and sub-paragraph 334(iv) of the Immigration Rules.
 - 2) Relying on the adverse credibility findings of Judge Peart, the claim that he was at risk on account of his imputed political opinions was rejected.
 - 3) The claim that KD's life would be in danger as a result of a blood feud arising from his murder of his wife was rejected. Further, he would be able to approach the police for protection.
 - 4) As to Article 8, deportation was conducive to the public good, and the appellant had not demonstrated that there were very compelling circumstances, such as to outweigh the public interest in his deportation.
 14. KD appealed to the FtT on the grounds that his removal would breach the Refugee Convention and Articles 2 and 3 of the ECHR. No appeal was brought under Article 8.

15. The appeal was heard on 1 November 2022 by Judge C. Scott. KD was represented by counsel, Ms Jennifer Lanigan. Evidence was given by KD, his brother AD, and his second cousin AHD. KD and AHD were treated as vulnerable witnesses, owing to KD's diagnosis of depression, anxiety and suicidal ideation, and AHD's diagnosis of PTSD.
16. On this occasion, KD produced and relied on an arrest warrant dated 2 August 2001, identifying him as "Being a member and aiding and abetting of a terror organisation called (D.H.K.P.C.)"
17. In a decision and reasons promulgated on 20 December 2022, the FtT allowed KD's appeal on asylum grounds. It held that his removal from the United Kingdom would put him at risk of persecution by the Turkish authorities. It found that:
 - 1) KD had rebutted the statutory presumption that he constituted a danger to the community and he therefore remained protected from refolement.
 - 2) Departing from Judge Peart's findings, that KD had been involved with the DHKP-C to the level stated by him, and had been ill-treated and beaten in Turkey. Upon return, he would be at risk of persecution from the Turkish authorities, and would therefore not be able to benefit from protection from the authorities, nor could he escape their persecution by means of internal relocation.
 - 3) In respect of KD's human rights claim, it held that it was likely that if he returned to his home village in Turkey, his wife's family would either attempt or succeed in killing him as a result of a blood feud. However, it stated that in view of its decision on the asylum claim, it would not go on to consider the question of internal relocation as a means of achieving sufficiency of protection.
18. The Secretary of State applied for permission to appeal from this decision on the grounds that (in summary):
 - 1) The FtT had misdirected itself or given inadequate reasons for its decision that KD was not a danger to the community.
 - 2) It had not correctly applied the guidance in *Devaseelan (Second Appeals – ECHR – Extra-Territorial Effect) Sri Lanka* [2002] UKIAT 00702; [2003] Imm AR 1 in its treatment of the prior adverse findings concerning the nature of KD's political activity and in its treatment of the arrest warrant.
 - 3) It had erred in its treatment of the alleged blood feud.
19. The FtT refused permission to appeal. It stated that the challenge to the dangerousness assessment was simply a disagreement with the judge's findings, that the judge had provided sufficient reasoning for departing from the earlier tribunal determination, and that any shortcomings in the analysis of the arrest warrant were immaterial.
20. The UT granted permission to appeal. It considered it arguable that the judge failed to give adequate reasoning in respect of dangerousness, or for departing from the earlier decision.

21. The appeal to the UT was heard on 3 July 2023 by Judge Perkins. Ms Lanigan again represented KD, while the Secretary of State was represented by Ms Ahmed, a Senior Home Office Presenting Officer. In a decision and reasons issued on 25 June 2024, the UT stated that it found no fault in the FtT decision in respect of dangerousness, and that it was entitled to have regard to the new witness evidence in reaching its conclusion about political activity and sufficiency of protection by means of internal relocation. It found more merit in the complaint about the late production of the arrest warrant, but considered that the FtT decision was not materially dependent upon that matter. The UT dismissed the appeal.
22. The Secretary of State sought permission to appeal on three grounds:
 - 1) The FtT decision in relation to dangerousness was inadequately reasoned and the conclusion perverse.
 - 2) The FtT misapplied the *Devaseelan* guidelines in its treatment of the later-produced evidence.
 - 3) The FtT’s approach to the arrest warrant was flawed in the light of the guidance in *Tanveer Ahmed* [2002] UKIAT 00439; [2002] Imm AR 318.

It was submitted that the UT had erred in law in failing to reach these conclusions and that the second appeals test was accordingly satisfied.

23. Permission to appeal was refused by the UT. It was said that the grounds were unarguable and were really a disagreement with the carefully reasoned decision of the FtT.
24. The Secretary of State then applied to this court for permission to appeal on these grounds:
 1. The Upper Tribunal’s decision is vitiated by procedural impropriety. The 12-month delay by the Upper Tribunal in promulgating its decision following the hearing renders it unsafe. The Upper Tribunal failed to recall and engage with the detailed oral submissions made at the hearing, incorrectly stating that the Senior Presenting Officer “could not say very much”.
 2. The First-tier Tribunal’s approach to section 72 of the Nationality, Immigration and Asylum Act 2002 was legally flawed, with conclusions that were inadequately reasoned and perverse. The Upper Tribunal erred in finding no such error in the First-tier Tribunal’s decision.
 3. The First-tier Tribunal misdirected itself on the guidelines in *Devaseelan v Secretary of State for the Home Department* [2002] UKIAT 702; [2003] Imm AR 1 and, in any event, misapplied them. The Upper Tribunal erred in finding no such misdirection or misapplication by the First-tier Tribunal.
 4. The First-tier Tribunal’s approach to the documentary evidence, particularly the arrest warrant, was legally flawed. The Upper

Tribunal erred in finding no such flaw in the First-tier Tribunal's decision or in deeming it immaterial to the outcome.

25. Permission to appeal was granted by Andrews LJ. Although each of the grounds raised different considerations, they collectively justified the hearing of a second appeal.

The appeal

26. The Secretary of State was represented by Mr Zane Malik KC, while KD was again represented by Ms Lanigan. Their submissions were of a very high quality.
27. I address the grounds of appeal in order.

Ground 1: Delay

28. Delay is not of itself a reason for an appeal to be allowed; the question is whether delay has caused the decision to be unsafe so that it would be unjust to let it stand: *SS (Sri Lanka) v SSHD* [2018] EWCA Civ 1391; [2018] Imm AR 1348 at [1]; *Bank St Petersburg PJSC v Arkhangelsky* [2020] EWCA Civ 408; [2020] 4 WLR 55 at [81, 83].
29. Those cases involved protracted delay in the delivery of judgments by trial judges. Delay in the delivery of an appeal decision may be equally corrosive of the confidence felt by the parties in the decision and by the public in the justice system, but it may not give rise to quite the same issues. Appeal judges do not generally hear oral evidence, assess witness credibility and find facts; also, the legal arguments upon which the appeal depends are normally preserved in writing.
30. However, there will usually be oral argument on an appeal, and here Mr Malik casts doubt on the UT's recall of the arguments, as illustrated by these paragraphs, which contain the sum total of its decision on dangerousness:

“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 [it] 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.”

31. We do not have a transcript of the UT hearing but we have seen Ms Ahmed's assiduous preparatory notes for her submissions, which on this issue alone ran to over 30 bullet points, including reference to authority: *MA (Pakistan) v Secretary of State for the*

Home Department [2014] EWCA Civ 163 at [19]. She is therefore likely to have conveyed the main substance of her case on this important point to the UT, and the observation that “she could not say very much about the decision that the claimant is not a danger to the community” is unlikely to be a fair reflection of what occurred at the hearing.

32. The extreme delay in providing this appeal decision was entirely unacceptable. Moreover, the decision that was finally provided was remarkably slight, consisting of four pages of scene-setting and one page of reasoning. It had more in common with a refusal of permission to appeal than a decision on an appeal for which permission had been given. The consequence is that this FtT decision gains no support from being upheld by the UT.
33. That said, this ground of appeal goes nowhere. While in form we are hearing an appeal from the UT, we are concerned in substance with the grounds that concern the FtT decision, to which I now turn.

Ground 2: Danger to the community

34. Section 3(5)(a) of the Immigration Act 1971 provides that a person who is not a British Citizen is liable to deportation from the United Kingdom if the Secretary of State deems his deportation to be conducive to the public good. Section 32(5) of the UK Borders Act 2007 places a duty on the Secretary of State to make a deportation order in respect of a “foreign criminal”, being a person who is not a British citizen and who has been sentenced to a period of imprisonment of at least 12 months or convicted of a specified serious criminal offence. However, subsection 33(2) provides that the duty does not apply where removal of the foreign criminal in pursuance of the deportation order would breach a person’s rights under the European Convention on Human Rights (‘ECHR’), or the United Kingdom’s obligations under the 1951 Refugee Convention, to which the United Kingdom is a party.
35. The issue of danger to the community was therefore determinative of whether KD might qualify for protection from deportation under the Refugee Convention.
36. Article 1 of the Refugee Convention defines a refugee as a person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country. Article 2 states that every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.
37. Article 33 contains the prohibition on the expulsion or return of refugees, and an exception to it:

“1. No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.”

38. Section 72 of the NIAA 2002, titled ‘Removal – Serious Criminal’, applies for the purpose of the construction and application of Article 33(2). At the time of the Secretary of State’s 2019 decision in relation to KD, subsection 2 provided that a person shall be presumed to have been convicted by final judgment of a particularly serious crime and to constitute a danger to the community if he is convicted in the United Kingdom of an offence, and sentenced to a period of imprisonment of at least two years (the period has been abridged to 12 months by the Nationality and Borders Act 2022). Subsection 6 provides that the presumption is rebuttable by that person. Subsection 9 allows for the Secretary of State to certify that the presumption under subsection 2 applies to a person, and subsection 10 provides that a body hearing an appeal under s. 82 NIAA 2002 must begin its substantive deliberation by considering the certificate, and if it is in agreement with it, must dismiss the appeal.
39. The Immigration Rules make provision for the grant and refusal of refugee status in accordance with this framework.
40. In *EN (Serbia) v Secretary of State for the Home Department* [2009] EWCA Civ 630; [2010] QB 633 at [45] this court observed that:

“So far as “danger to the community” is concerned, the danger must be real, but if a person is convicted of a particularly serious crime, and there is a real risk of its repetition, he is likely to constitute a danger to the community.”

The FtT directed itself accordingly.

41. Against this background, it was common ground that KD had been convicted of a particularly serious crime. The FtT correctly noted that the Secretary of State considered him to be a danger to the community. It expressed its conclusion on that issue in this way:

“38. I have carefully weighed up the evidence in the round, in reaching a conclusion as to whether the appellant has rebutted the presumption as to whether he constitutes a danger to the community of the United Kingdom. I find that he has rebutted the presumption, taking account of the following:

a) The appellant has a conviction for one offence. Whilst there is no doubt that murder is an extremely serious offence, he has no other history of offending.

b) The appellant was released from prison in August 2018, a period of over four years as of the date of hearing. Since release, he has not reoffended and is fully engaging with the Probation Service. He is

assessed by the Probation Service as presenting a low risk of committing a further offence.

c) The appellant undertook rehabilitative courses whilst in prison to address his offending. Further, since his release, he attends monthly supervision sessions with his Probation Officer. Further, the appellant has learned techniques so as to control his emotions.

d) Whilst the Parole Board assessed the appellant as posing a medium – high risk of serious harm to intimate partners, this has been downgraded by the Probation Service as a risk of medium. Further, this assessment was based on his offending behaviour.

39. For the reasons given above, notwithstanding the seriousness of the appellant’s offending, I am satisfied that he has rebutted the presumption. It follows therefore that he remains protected from refoolment.”

The Parole Board assessment was in May 2018, while the references to the Probation Service were to a short letter in April 2022 from KD’s probation officer.

42. In an earlier paragraph the FtT also said that KD’s remorse for the crime he committed was relevant, although not determinative, as to whether he constituted a danger to the community. It had regard to the decision of the Parole Board, which stated that he had expressed regret for what he did.
43. Mr Malik submitted to us that the FtT erred in its assessment of danger to the community by (1) giving weight to the absence of other offending, when that was at best a neutral factor since KD was obliged not to commit crimes; (2) placing such reliance on the Probation Service assessment; (3) treating a low risk of serious offending as if it was insignificant, contrary to *MA (Pakistan)* ([31] above); and (4) placing reliance on remorse, when the most that it identified was an expression of regret.
44. In response, Ms Lanigan contended that the FtT decision was one that a reasonable decision-maker could have come to on the evidence. The judge engaged with the legal framework and carefully weighed all factors including the seriousness of the offence. Lack of other offending and remorse were relevant to risk, indeed it would have been an error of law to leave them out of account. KD’s statement had expressed “deep regret”, and that was bolstered by other evidence such as that contained in the Parole Board decision. Like any decision, this one could have been better expressed, and this court should exercise judicial restraint. The threshold of perversity, as described in *Miftari v SSHD* [2005] EWCA Civ 481 at [36] – a decision no reasonable decision-maker could come to on the evidence available – is not crossed.
45. A judge making an assessment of risk, in this or any other context, undoubtedly enjoys a great deal of latitude. Provided they sufficiently identify the main features of the evidence and weight them up in a broadly coherent way, the assessment will be secure on appeal. On this ground of appeal, I am not much moved by some of Mr Malik’s arguments. The FtT may have elided regret with remorse but the distinction, taken at its highest, could only have a limited effect on the risk assessment. The tribunal was

bound to have regard to the fact that KD had committed a single offence, to how he had behaved in prison and responded to intervention, and to the view of the Parole Board, because all these matters were relevant to its own assessment. I also entirely agree that this court should exercise restraint and not strain to find errors of law.

46. Despite all of that, I have concluded that this decision of the FtT on this issue was not one that a reasonable decision-maker could have come to. In accepting that KD had proved that he was not a danger to the community, it demonstrably lost sight of a number of matters.
47. The assessment of whether a person who has committed a particularly serious crime constitutes a danger to the community involves consideration of the nature of the crime, the likelihood of further serious offending, and the level of harm that might result.
48. The passage cited at [41] above shows that the FtT acknowledged the seriousness of KD's offence, but it immediately diluted that with statements that it was a single offence. Similarly it gave no adequate consideration to the fact that the foreseeable consequences of any reoffending were extremely serious, even if they were less than fatal. Most fundamentally, even after all remedial efforts on the part of KD and those seeking to help him, there was still a real risk of repetition. The FtT did not depart from the assessments that he remained a "medium risk of serious harm to intimate partners", with a "low likelihood of serious harm to everyone else". However, it undercut them by noting that the risk assessment in respect of intimate partners had been reduced from high to medium, as if that gave reassurance.
49. The community consists of all its members, including those with whom a person is on intimate terms. Here, the type of harm was the most extreme form of domestic violence. As to the risk to others, the community should not be expected to tolerate a real likelihood of serious harm from individuals who qualify for deportation, and in this context a low likelihood of serious harm is a real likelihood, in that it cannot be said to be fanciful.
50. We were shown *MA (Pakistan)* by Mr Malik. The applicant had received a three year sentence for money-laundering and was facing deportation. He sought permission to appeal to this court from the rejection of his appeal by the UT, one of whose conclusions was that the s.72 presumption was not displaced because he posed a real risk of committing further offences. He argued that the tribunal should not have gone beyond the probation officer's assessment, which was that there was a 17% chance of reoffending within 2 years. Elias LJ, with whom the other members of the court agreed, stated at [19] that the tribunal was not bound by the probation service assessment, and he added that in any event:

"A risk of 17% re-offending over a 2-year period is not, in my judgment, in the context of a deportation case a matter which can be treated as insignificant. It is a good reason for supporting a decision to deport."

This was a permission decision, albeit one emerging from full argument, but it illustrates a correct approach to risk assessment in a case where the past offending and the consequences of repetition were of a far lesser order of magnitude than in the present case.

51. All assessments of dangerousness depend on their facts. In this case, the index offence and the feared harm were of such gravity that, in order to displace the statutory presumption, KD would have had to show that the likelihood of future serious offending was so low that it could effectively be discounted. The FtT did not reach that conclusion and the evidence came nowhere near to supporting it. Its decision on this issue was not reasonably open to it and it was, in the legal sense, perverse. As seen at [30] above, the UT did not properly engage with the Secretary of State's challenge.
52. I would substitute a decision that the s.72 presumption has not been displaced and that KD is therefore not eligible for the protection of the Refugee Convention. The conclusion on this ground is sufficient, if my Lords agree, for the Secretary of State's appeal to succeed, because the tribunal decisions were based entirely on acceptance of KD's claim for asylum on the basis of imputed political opinion. However, that does not determine his human rights claims under Articles 2 and 3, based on imputed political opinion and blood feud, and Grounds 3 and 4 must therefore be addressed as well.

Grounds 3 and 4: the Devaseelan guidelines

53. *Devaseelan* (above) gives guidance on the effect that a previous determination should have on the decision-making process of a tribunal hearing a subsequent appeal. Ground 3 asserts that the FtT misdirected itself and misapplied the guidelines. Ground 4 asserts that the FtT approach to the arrest warrant was legally flawed.
54. The *Devaseelan* guidelines were approved by this court in *Djebbar v SSHD* [2004] EWCA Civ 804; [2004] Imm AR 497. As Judge LJ observed:

“40. ... The great value of the guidance is that it invests the decision-making process in each individual fresh application with the necessary degree of sensible flexibility and desirable consistency of approach, without imposing any unacceptable restrictions on the second adjudicator's ability to make the findings which he conscientiously believes to be right. It therefore admirably fulfils its intended purpose.”
55. The guidelines themselves, which were accompanied by some internal commentary, were summarised in this way in *BK (Afghanistan) v SSHD* [2019] EWCA Civ 1358; [2019] 4 WLR 111:

“(1) The first adjudicator's determination should always be the starting-point. It is the authoritative assessment of the appellant's status at the time it was made. In principle, issues such as whether the appellant was properly represented, or whether he gave evidence, are irrelevant to this.

(2) Facts happening since the first adjudicator's determination can always be taken into account by the second adjudicator.

(3) Facts happening before the first adjudicator's determination but having no relevance to the issues before him can always be taken into account by the second adjudicator.

(4) Facts personal to the appellant that were not brought to the attention of the first adjudicator, although they were relevant to the issues before him, should be treated by the second adjudicator with the greatest circumspection.

(5) Evidence of other facts, for example country evidence, may not suffer from the same concerns as to credibility, but should be treated with caution.

(6) If before the second adjudicator the appellant relies on facts that are not materially different from those put to the first adjudicator, the second adjudicator should regard the issues as settled by the first adjudicator's determination and make his findings in line with that determination rather than allowing the matter to be re-litigated.

(7) The force of the reasoning underlying guidelines (4) and (6) is greatly reduced if there is some very good reason why the appellant's failure to adduce relevant evidence before the first adjudicator should not be, as it were, held against him. Such reasons will be rare.

(8) The foregoing does not cover every possibility. By covering the major categories into which second appeals fall, the guidance is intended to indicate the principles for dealing with such appeals. It will be for the second adjudicator to decide which of them is or are appropriate in any given case."

56. In *Tanveer Ahmed* (above) it was stated at [38] that in asylum and human rights cases it is for an individual claimant to show that a document on which he seeks to rely can be relied on, looking at the evidence in the round.
57. In the present case, the 2004 decision determined KD's claim for asylum based on imputed political views. As noted above, Judge Peart heard oral evidence from KD and his wife. KD produced documents concerning other members of the family, including his brother AD, who was living in the UK. In a detailed analysis, the judge scrutinised KD's evidence about his asserted political activities at [15-18], and his wife's evidence at [19]. He noted that in written and oral evidence KD had said a number of times that he had not been working for DHKP-C since 2000 but for another organisation (HOP). Judge Peart considered that this was very damaging to the credibility of KD's claim that he was at risk due to his activities on behalf of DHKP-C both before and after 2000.
58. Judge Peart stated his conclusion:

"20. On the evidence before me, I don't accept that the evidence of either Mr or Mrs D is consistent with involvement at any level of DHKP-C and, in my view, they have manufactured an account of such involvement to justify their asylum application. I don't accept that Mr D could have been involved in DHKP-C for six years whether as an important activist or a low level supporter without being aware of the fundamentalist Marxist-Leninist ethos of armed revolution and attacks on "symbols of Imperialism" as well as the

Turkish security forces and public figures. ... I don't accept that Mrs D was interested in politics either before or after her marriage.

21. A clash with local villagers in June of 2000 prompted Mr and Mrs D to move to Istanbul. It is Mr D's claim that whilst the incident began as a dispute over grazing rights, the issues were truly an attempt to persecute them because of their Kurdish ethnicity. Mr D was accused of being behind the violent incident because of his involvement with the DHKP-C. Mr D would have me believe that subjected to all kinds of torture including Palestinian hanging, falaka and electric shocks, he refused to confess to his DHKP-C involvement and was allowed to go free. I don't accept that if Mr D had been involved in DHKP-C as actively as he would have me believe between 1994 and 2000, that the authorities, suspecting his involvement, would not have been able to satisfy themselves with regard to the same such as to bring charges against him. On his own evidence, he'd been involved in various activities and given that he says that others confessed under torture and were charged with various offences arising from the grazing rights fracas, I find that if the authorities had been intent upon pursuing him as a supporter of DHKP-C, they would have been able to secure such information sufficient to bring charges or deal with him summarily as a known terrorist. I don't accept that given these circumstances, Mr D would have been allowed to walk free to return home, subsequently to move to Kucukarmutlu in Istanbul."

...

"36. ... I had the benefit of observing both Appellants give oral evidence. I found them hesitant, confused, vague and evasive. I find that any one of the contradictions, inconsistencies and improbable events I have referred to aforesaid would go to the core of each of the Appellants' accounts to be in need of international protection for a Convention reason. Looked at in the round, I find they have submitted wholly fraudulent asylum applications with no truthful foundation.

37. I have considered the implications for the return of Mr and Mrs D in terms of *[2003] UK IAT 0034 A (Turkey)* but do not accept there is anything in either Appellant's background to place them at risk on return other than their Kurdish ethnicity. I do not accept that Kurdish ethnicity per se is sufficient to found a claim. I do not accept either Appellant would be at risk from the Turkish authorities on arrival there and find they will be viewed as nothing other than failed asylum seekers. I have been asked to accept various copy letters contained in the Appellants' bundles with regard to AD, Mr D's brother, HD, his cousin and various other relatives. [Counsel] tells me her instructions are that each of these individuals has been recognised as a refugee in the United Kingdom. There has been no evidence produced to me nor submissions made as to precisely how or in what manner, these individuals came by their ILR status in the

United Kingdom and with the exception of AD and HD, their relationship to either of the Appellants. There is nothing before me to indicate that any of these individuals have been accepted as refugees. None of them attended court to give evidence nor was there any witness statement prepared by any of them for my consideration. On the evidence before me, I have found Mr and Mrs D to be wholly unreliable witnesses with regard to their claim to persecution in Turkey. I do not accept either of them come from a politically significant background nor that the relationship they have (if any) to the individuals whose documents are photocopied in their respective bundles, is significant in terms of *A* in placing either of the Appellants at any risk on return. I don't accept, given my adverse credibility findings, the genuineness of the documentation relating to Mrs D's family in terms of *Tanveer Ahmed [2002] UK IAT 00439*.

38. I have considered the position of each of the Appellants on return in terms of *MS (Turkey) GBTS Info at Borders, Turkey [2004] UK IAT 00192*, *CE Turkey CG [2004] UK IAT 00233* and *AG Turkey CG [2004] UK IAT 00168*. I do not accept that either Appellant ever came to the attention of the authorities in Turkey. I don't accept that their details will be logged in the GBTS or any other system. I don't accept Mr D's photograph and fingerprints were ever taken. I don't accept either Appellant has any record which will adversely affect their return."

59. Eighteen years later, KD made the same claim to the FtT. On this occasion, he and his brother AD and another cousin AHD gave evidence, while his wife obviously did not. AD had lived in the UK since 1990, while AHD had arrived in 2017.
60. The FtT fairly summarised the 2004 decision at [11]. It stated, in a sentence at [27], that it had reminded itself of the guidance in *Devaseelan* and, at [40], that it took the findings of Judge Peart as its starting point. Matters relating to the blood feud occurred since the first decision, and could be considered. Further:

"I find that the appellant has provided evidence in support of his imputed political opinion which post-dates the decision of Judge Peart. As such, I find that I can consider these matters in making my findings."

61. The FtT's treatment of further evidence must be quoted in full:

"Imputed political opinion

60. I move on to consider whether the appellant would be at risk on return on account of his imputed political opinion. As stated above, Judge Peart made adverse credibility findings in respect of the appellant and did not accept the appellant's account that he was a supporter/member of DHKP-C, nor did he accept that he would be at risk of persecution on return. I take his findings as my starting point.

61. The appellant seeks to rely on further evidence in support of his claim that he would be at risk on return. He also advances the same facts that he advanced in his asylum appeal before Judge Peart. As to new evidence, he relies on the accounts given by AD and AHD, and further documentary evidence.

62. In his witness statement dated 8 April 2021, AD stated that his (and by extension, the appellant's) family have been involved in politics in Turkey, that many have been involved with the DHKP-C, and some have been imprisoned. He goes on to state that their cousin, DD, was murdered by the police in 2015. There is little doubt in his mind that if the appellant was returned to Turkey, he would be identified as a member of the family, questioned and tortured. In his further statement dated 19 July 2022, AD stated that the appellant was involved in politics in Turkey with DHKP-C.

63. In his witness statement, AHD stated that the appellant was a supporter of DHKP-C. He confirms that other family members have also been involved with DHKP-C and imprisoned as a result. He states that DD was murdered by the police in Istanbul in 2015.

64. The appellant also relies on an arrest warrant issued in his name by I.S.T State Security Court. This identifies the appellant as 'Being a member and aiding and abetting of terror organisation called (D.H.K.P.C).' The warrant is dated 2 August 2001. There is a further document from the 'Office of the Chief Public Prosecutor' dated 15 August 2001 identifying the appellant as a person who did not attend court hearings as required to do so. It stated that the appellant gave *'shelter and assistance to the illegal organisation (DKHP-C/Revolutionary People's Liberation Party/Front) and also provided assistance and shelter to MD and AZD, close relatives of the individual concerned, who are militants of the organisation.'* The appellant further relies on an indictment issued by the Ankara Chief Public Prosecution Office in 2021, in respect of his nephew, HD. Under cross-examination, Ms Ayodele asked the appellant how he obtained these documents. He was unable to recall when he received the documents dated 2001, but said that they could have been sent by his brother, RD.

65. The appellant was asked what he thought would happen to him if he returned to Turkey, to which he said that he would have problems with the authorities, on account of his involvement with a left-wing organisation, and due to the fact that he was Kurdish. He was also asked whether he believed there were any outstanding charges against him in Turkey, to which he said he did not know. He said that it had been so many years since he left Turkey, he did not know what he would face on return.

66. AD was also questioned under cross-examination. He was asked why he believed that the appellant would be questioned and detained on return to Turkey. He stated that it was on account of him being a

member of DHKP-C. He was asked whether the arrest warrant was still outstanding against the appellant, to which he said he did not know.

67. AHD was also questioned about the risk to the appellant on return to Turkey. He stated that he believed the appellant would have problems with the authorities, due to his political background. As per [46] above, Judge Mitchell allowed AHD's asylum claim in July 2019. He made findings that a significant number of his family members have been accused of being DKHP-C members, or suspected as such; that the political fallout from DD's death is unlikely to be at an end, with the finger of blame to continue to be pointed at the Turkish authorities; he would return without an up-to-date passport; his departure from Turkey would have aroused suspicion in terms of his political activities and allegiances; and, consequently, he would be at risk of persecution on return.

68. I have considered the evidence in the round. Whilst the findings of Judge Peart were my starting point, I find that I can consider facts which have occurred since the decision was made. I find that the murder of DD and the political activity of other family members of the appellant are facts I can now take into account. Further, I find that there is new evidence which supports the appellant's claim that he is a supporter of the DHKP-C, namely the evidence of AD and AHD, and the arrest warrant, document from the 'Office of Chief Public Prosecutor' and the indictment pertaining to HD.

69. I am able to depart from the adverse credibility findings of Judge Peart. I do so because I found AD and AHD to be credible, and as such, accept their accounts. Furthermore, I find that the arrest warrant and document from the Office of the Chief Public Prosecutor demonstrate that the appellant was arrested, and has been subject to charges in Turkey, on account of his association with DKHP-C. They are corroborative of his account."

62. The FtT then considered the relevant country guidance: *IA (Turkey) 2003 UKAIT 00034*. In doing so, it stated at [71-72] that

"I find that the appellant was involved with DHKP-C from 1994 until he fled Turkey to come to the UK. Whilst I took Judge Peart's findings as the starting point, I find, for the reasons given, that the appellant was involved with DKHP-C to the level stated by him."

"I find, based on the appellant's account and the arrest warrant issued, that the appellant was detained and arrested in Turkey, in connection with his affiliation with DHKP-C."

"I find that the authorities viewed the appellant as a suspected separatist. This is evident from the arrest warrant and letter from the Office of Chief Public Prosecutor."

“I accept the appellant’s account that he was ill-treated and beaten in Turkey.”

“I find, based on the arrest warrant provided by the appellant, that there is an outstanding arrest warrant in his name, issued in 2001. However, I find that there is no evidence before me to demonstrate that the authorities are continuing to look for him in Turkey at present.”

“I find, having considered the evidence alongside the factors listed above, that upon return to Turkey as a failed asylum seeker, it is likely that the appellant will be questioned by the Turkish authorities. As per IK (Returnees – Records – IFA Turkey) CG 2004 UKIAT 00312 at [133.6], if there is either a material entry in the GBTS or in the border control information, or if a returnee is travelling on a one-way emergency travel document, then there is a reasonable likelihood that he will be identifiable as a failed asylum seeker and could be sent to the airport police station for further investigation. I find that the appellant, travelling on a one-way emergency travel document, fits into this category. It is likely that the appellant would then be further subject to lengthy interrogation. As per IK at [86], he should not be expected to lie. I find that such questioning would result in the authorities becoming aware of the appellant’s support of the DHKP-C, the fact that that several members of the appellant’s family have been accused of being DHKP-C members or supporters, and of the warrant which was issued in respect of the appellant. I find, applying the Country Guidance, that the combination of these factors is likely to put the appellant at risk of persecution from the Turkish authorities.”

63. On this issue, the UT said this:

“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.”

64. Mr Malik submits that the FtT did not in truth take the 2004 decision as a starting point, nor did it take account of guidelines 4, 5, 6 (to an extent) and 7. Ms Lanigan submits that, as this court has repeatedly stated, a specialist tribunal is taken to be aware of relevant authority and to be seeking to apply it. Here, the FtT had good reason for reaching a different conclusion, the reason being the cogency and compelling nature of the new evidence. As the UT found, its conclusion would have stood on the basis of the witness evidence, even if the warrant formed no part of it.
65. The guidelines in *Devaseelan* are an important weapon in the armoury of tribunals seeking to achieve a consistent approach that is fair to all parties when faced with similar or repeat appeals. However, as Dove LJ observed during argument, there is a danger that, being so familiar to specialist judges, they are not fully applied.
66. To illustrate, the first guideline, which created the concept of a ‘*Devaseelan* starting point’, calls for more than a recognition that there has been a previous decision. In order to identify the true location of the starting point for its own journey, the second tribunal must identify the scope of the issue(s) that may be common to the two appeals, and analyse what the first tribunal found and why. It is only by doing this that it can know what significance should properly be attached to the first appeal decision, before going on to apply the guidance as a whole. The other guidelines, insofar as they are relevant to the inquiry in the individual case, require equal consideration. A broad statement by the second tribunal that it is treating the first tribunal’s decision as its starting point is not an application of the *Devaseelan* guidance and is likely to lead to error, one way or the other.
67. In the present case, FtT made a number of legal errors in its treatment of the earlier appeal decision:
- 1) It summarised the earlier decision and stated four times that it treated it as its starting point, but it did not then meaningfully do so. It did not orient itself by noting that it was being asked to consider the identical question of KD’s political involvement in Turkey between 1994 and 2001. It did not refer to guideline 6, which required it to consider whether the facts now relied upon were materially

different. If they were not, it should have regarded the issue of the degree of past political involvement as having been authoritatively settled by the earlier decision.

- 2) The “new evidence” on which the FtT relied did not in truth give rise to materially different facts. Neither AD nor AHD gave circumstantial accounts of KD’s actions and experiences between 1994 and 2001, nor were they better placed than KD himself to do so. The FtT should therefore have treated the 2004 decision as an authoritative assessment of KD’s political activity in Turkey.
 - 3) Even if it was entitled to treat the “new evidence” as raising materially different facts, the FtT should have grappled with the fact that KD’s original claim had not failed for some external reason, but because his own contemporaneous account was found to lack all credibility when subjected to scrutiny. In particular, Judge Peart had rejected his account of having been arrested, beaten and tortured on numerous occasions, the last being on 2 August 2001. Despite that, the FtT gave no apparent weight to this credibility assessment when it fully accepted KD’s account on the same subject eighteen years later, indeed it made no comment on KD’s own evidence on this issue.
 - 4) Regarding guideline 4, the FtT did not treat the further witness evidence with anything approaching the greatest circumspection, either as to its credibility or its relevance. It did not explain why AD’s account that KD was “involved in politics with the DHKP-C” over twenty years ago should carry any weight in supporting KD’s account of the same ill-treatment, or any significant weight in assessing his level of political involvement. Nor did it explain why AHD’s statement that KD was “a supporter of the DHKP-C” should carry weight, AHD having arrived in the UK sixteen years after KD. The FtT did not explain how their evidence, even if it was apparently credible, rescued KD’s own account, which had been found in 2004 to be contradictory, inconsistent and improbable.
 - 5) Regarding guideline 5, the FtT does not appear to have treated evidence about the experiences of other family members, including the alleged murder of DD by police, with caution.
 - 6) Regarding guideline 7, the FtT gave no consideration to whether there was any very good reason why AD did not give evidence in 2004, having by then been in the UK for 14 years.
 - 7) Regarding guideline 7, the FtT did not consider whether there was any very good reason for the 2001 arrest warrant not having been produced in 2004, or why it should now be treated as being reliable evidence.
68. The UT failed to correct any of these errors. The FtT’s self-direction was not impeccable and its decision could not properly be upheld by the assertion that “important evidence was just not available before”. It was artificial to treat the error of approach in relation to the warrant as immaterial: the real issue about the warrant was not whether it was material but whether it was reliable, given that it had not been produced at the expected time and that no explanation, good or otherwise, had been given for that.

69. I therefore conclude that the FtT did not apply the *Devaseelan* guidance. At most it had regard to guideline 1, but not in a way that informed its analysis. In substance, its decision resembles a careful decision on a first appeal. Had it applied the guidance methodically, it is not possible to see how it could have reached its conclusion on the issue of KD's political activities between 1994 and 2001. KD was making the same claim in 2023 on the basis of substantially the same evidence as that produced in 2004. The best witnesses on that topic were KD and his wife, both of whom had given evidence and were disbelieved for strong reasons. On a correct analysis, the evidence of AD and AHD added little, and the tribunal should not have treated the arrest warrant as reliable without considering whether there was a good reason why it had not been produced in 2004.
70. I would therefore hold that the 2004 assessment of KD's political activities is to be treated as authoritative and that his asylum and human rights appeals on the basis of imputed political opinion should be dismissed.

Outcome

71. The appeal succeeds on Grounds 2 and 3, Ground 4 being subsumed in Ground 3.
72. That leaves the question of blood feud. It is uncomfortable that a foreign criminal subject to deportation should be able to claim human rights protection because of an alleged blood feud resulting from his crime, but the appeal must be decided in accordance with principle. It is unfortunate that the FtT did not make comprehensive findings, and that appeal must therefore be remitted for determination.
73. Two questions remain. The first is whether remittal should be to the FtT or the UT. In my view the latter course is to be preferred, bearing in mind the history, and the need for a decision to be made as soon as possible. I would remit to the UT, with a request to its President that the matter be appropriately allocated and be expedited to the extent that he considers appropriate.
74. The second question is whether the FtT's finding about the existence of a blood feud should be preserved. The Secretary of State did not accept KD's case, but did not appeal the finding. Even so, I would not preserve any findings. The issues of the existence of a feud on the one hand, and sufficiency of protection and availability of internal relocation on the other, are so closely connected that it is better for that whole matter to be considered afresh, particularly as other findings of the FtT based on the evidence of the same witnesses have been set aside. The Secretary of State can decide whether or not to make any concessions about the evidence in relation to the existence of a feud. If the real issue concerns the availability of internal relocation, Mr Malik submitted that KD must face an uphill struggle, but that will be a matter for the UT to decide.

Lord Justice Arnold :

75. I agree.

Lord Justice Dove :

76. I also agree.