



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

Appeal Number: AA/07100/2015

THE IMMIGRATION ACTS

**Heard at Bradford
On 18th March 2016**

**Decision & Reasons Promulgated
On 18th May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

**MR MEHMET ZEKI KILINC
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C T Cole a solicitor

For the Respondent: Mr M Diwnycz a Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Turkey born on 23 April 1993. He arrived in the UK on 27 March 2015 and claimed asylum and humanitarian protection in the UK. He also claimed that his human rights, which are protected by the European Convention on Human Rights (ECHR) would be infringed if he were returned to Turkey.
2. The respondent refused his application and decided to remove the appellant from the UK on 16 April 2015. The appellant had a right of

appeal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. He subsequently utilised that right. His appeal came before Judge of the First-tier Tribunal Myers, who, following a hearing at Bradford on 12 August 2015, dismissed the appeal on all grounds. He made no direction for anonymity and no fee award.

The Upper Tribunal Appeal

3. The appellant prepared grounds of appeal on 2 September 2015, arguing that the Immigration Judge had made an error of law in his assessment of the evidence, failed to take into account when assessing that evidence that the appellant was “stressed from his journey” having been discovered in the back of a lorry in Dover on 27 March 2015. In addition, the appellant’s interview had taken place approximately two and a half weeks after his arrival in the UK and the appellant was still “stressed” by the experience. The appellant had explained in interview why he found it hard to recount the relevant events. There had been a number of expressions of concern over the appellant’s psychological state which were made clear to the respondent when the interview had concluded. Notwithstanding these facts the Immigration Judge had gone on to reject the appellant’s explanation for any omission in his asylum interview. The judge had been wrong to regard the case as incredible.
4. The appellant had been part of a blood feud arising out of a Turkish land feud in which one family had been killed and the rival family needed revenge. However, the incidents went back over twenty years it was not possible to assess credibility without taking into account the country guidance material. Unfortunately, the judge had not taken full account of the country guidance material and had reached a precipitate view of the country information. It was essential that this information was properly considered to reach a proper view of credibility. Unfortunately, blood feuds regularly took place in Turkey and sometimes lasted for years.
5. The Immigration Judge had also been wrong to reject certain documents. At paragraph 26 of his decision it was submitted that they provided a cogent explanation that the appellant’s family were indeed involved in an incident which occurred on 20 December 2014. The appellant’s uncle (Ahmet Kilinc) was shot and injured in an incident which was detailed in a document, namely an indictment from the Chief Prosecutor’s office in Gaziantep. The document refers to a “prior feud” and “fighting”.
6. Despite this “cogent evidence”, which had apparently been accepted by the Immigration Judge as being “genuine”, he went on to reject the claim. The Immigration Judge did not accept the feud between the appellant’s family and a rival family.
7. The Immigration Judge had failed to assess the appellant’s claim of a blood feud and any inconsistencies spotted by the Immigration Judge were based on errors. It was submitted that the errors, including factual errors,

undermined the whole decision. The decision should have been that the country guidance information and background evidence was sufficient to show the appellant to be at risk from a blood feud which would have violent consequences if he returned to Turkey.

8. The judge granting permission (Upper Tribunal Judge Lindsley) found a number of arguable errors of law on 27 October 2015. Specifically, Judge Lindsley noted the various arguments set out in the grounds and the fact that it was said that a genuine indictment had been produced from the Chief Prosecutor's office which made specific reference to the blood feud. The grounds in Judge Lindsley's view were at least arguable as the appellant appeared to fail to have due regard to the incidents alleged and the possible risk to the appellant on return. However, Judge Lindsley did note that the appellant would need to show that there was no available safe internal flight alternative to seeking international protection. Judge Lindsley noted that paragraph 28 of the decision appeared to deal with this.
9. In response to the appeal and the grant of permission Mr Melvin prepared a response under Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (Upper Tribunal Rules). In his Rule 24 response Mr Melfein points out that the respondent is in possession of records to show that the appellant arrived in the UK on 27 March 2015 and his asylum interview was conducted on 14 April 2015. At that time he was found to be "fit and well". The respondent said in her Rule 24 response that the appellant sought to raise forensic criticisms of a number of findings whilst ignoring the essential legal test that he had to satisfy (by reference to **VHR (unmeritorious grounds) [2014] UKUT 367 (IAC)**). Mr Melvin indicated that his client would be submitting that the blood feud, based on the evidence, had been settled twenty years previously by the appellant's grandfather. The adverse credibility finding at paragraph 24 was open to the judge in the light of the evidence. Further, the Immigration Judge only had a faxed copy of a police report and was entitled to have doubts as to the credibility of this document. The Immigration Judge gave reasons for this at paragraph 26 of her decision. Finally, the respondent submitted that the grounds amounted to no more than an attempt to re-argue the appeal and the internal relocation finding stood, as Judge Lindsley said at paragraph 4 of the grant of permission in this case.

The Hearing

10. At the hearing I heard submissions by both representatives. The appellant's representative, Mr Cole, began by outlining his grounds. He did not have "a huge amount" to add to the grounds summarised above and the renewed grounds which are set out in an application for permission to appeal to the Upper Tribunal dated 13 October 2015. These state that the reasons the First-tier Tribunal (FtT) gave for initially refusing permission were not cogent because the Immigration Judge had made a mistake over the length of time between the appellant's arrival into the

UK, when he was said to have been fatigued by the journey, and the conduct of the interview. This was clearly a material error. Furthermore, the judge who initially refused permission to appeal (FtTJ Foudy) was wrong to characterise the grounds as being “nothing more than a disagreement with the findings made”. They were clearly principled grounds of objection to the credibility and other adverse findings. It was submitted that the judge had erred in law and not simply disagreed with the submissions made on behalf of the appellant.

11. Mr Cole referred me to paragraph 23 of the decision which contains a finding of inconsistency between the oral evidence given before the FtT on 12 August 2015 and the appellant’s answers to questions in interview (it appears on 14 April 2015). There, the Immigration Judge suggests that the appellant did not mention that his brother had been disabled. Yet this formed part of the answers he had given to questions at the hearing. In particular, he had claimed at that hearing that his brother had been disabled in a car accident about four or five years previously. The appellant was asked to explain the discrepancy. He put this down to stress during the interview. This, it was said by Mr Cole, was consistent with the appellant finding the process “psychologically demanding”. Furthermore, the appellant was recovering from a long journey conducted only two and a half weeks previously. My attention was drawn to the answer the appellant gave to question 135 in interview where he indicated that the process had had an adverse psychological effect on him. Secondly, I was referred to the answer he gave to question 155 where he was asked whether he was satisfied he had told the interviewing officer of his reasons for claiming asylum and the fact that he had said yes but had gone on to say that he was not well psychologically. My attention was also drawn to page B7 in the screening interview where the appellant pointed out that he acknowledged he was having a “negative effect” but this was due to his psychological state. The appellant said that he had not registered with a nurse but he needed to get to see a doctor quickly. This was his explanation for inconsistencies. They should have been accepted by the Immigration Judge but were not.
12. Mr Cole then went on to outline why he said the Immigration Judge’s failure to take account of country guidance evidence was a “material error”. He said that there was sufficient country guidance information available that blood feuds did not “go quiet”. He referred to the appellant’s bundle of documents at page 21 which refers to the “enduring and violent” nature of these family tussles which often involve deaths as in the case of an incident in Tarsus. There are incidents where persons are “shot in cold blood”. The fact that the blood feud was twenty years old did not mean that there would not be another incident. There had been cases where blood feuds had only ended after 49 years. The Immigration Judge had not give a credible reason for deciding that the history of blood feuds was at an end in this case. This was clearly an error of law.

13. Judge Lindsley found the grounds arguable but had queried the materiality of the deficiencies unidentified given the finding of safety through internal flight being available.
14. At paragraph 28 of the decision the Immigration Judge had found that there was recent evidence of blood feuds in his “home area” and prejudice against Kurds generally. However, the appellant could relocate from his home area if this were necessary. Mr Cole criticised this finding because he said “he would be tracked down in Istanbul.”
15. Finally, Mr Cole submitted that because of the absence of adequate credibility findings and adequate consideration of the country guidance material the case needed to be “remitted back to the FtT” to start afresh. I was invited to preserve no findings and remit to that tribunal.
16. Mr Diwnycz in response stood by his client’s Rule 24 response. One small observation he wished to add was that at B1 in his bundle the appellant had been introduced to the interpreter and had confirmed that he understood everything later. He was content to be interviewed in Turkish and described himself as feeling well enough to be interviewed. As the respondent pointed out, there was little else that she could do to ensure the appellant understood what he was being asked. Mr Diwnycz apologised if anything in the standard interview form was unduly simplistic. Mr Diwnycz appeared to accept that if a material error of law was found the case could go back to the FtT but he did not demure from the suggestion that the Upper Tribunal, being seized of the matter, should go on and determine whether or not the appeal succeeded or not in the event that it found an error of law.
17. Finally, the appellant responded to say that much of the information supplied to the FtT was historic in character and would need updating if a fresh decision was to be taken. However, I made the point that it would be possible to have a fresh hearing to examine the objective evidence if this became necessary. Both parties agreed that it would only take an hour or so for this to be done.
18. At the end of the hearing I reserved my decision which I will later give with my reasons.

Discussion

19. The appellant, who is a Turkish Kurd, claims that there is no safe place for him to live in Turkey and he travelled to the UK in the back of a lorry “very frightened” with a view to claiming asylum in the UK. This was on 27 March 2015. The incidents he referred to go back over twenty years but in particular it is alleged that in 2012 the ancient feud between the Kes tribe and his own family was revived when two men Ahmed and Mikhail who were violent criminals, wanted to seek revenge. Having, somehow, obtained the appellant’s telephone number it was the appellant who was

the hapless victim of their intended blood lust. The appellant gives an account of having been assaulted so the appellant decided to flee from Gaziantep, where his family were from, and live in Istanbul where he was able to stay for about six months. He claims that he was found by Ahmed and Mikhail where the assault took place. The appellant had to seek refuge in an empty building for a few days before returning to his family in Gaziantep. The appellant then did his military service for two years having been discharged from the military in eastern Turkey in January 2014. Unfortunately, when he returned home a further incident occurred the following December (i.e. in 2014) when the above-mentioned assailants were spotted. It appeared that they shot the appellant's uncle, although he was able to secure himself in "the house". This incident took place in Palika. The police investigated the incident but the appellant claimed (in answer to question 113 of the interview) that "after a day, they released (Ahmet and Mikhail)". This caused the appellant to go to a village called Satirhouyuk, from which his mother came. However, at the village PKK guerrillas invited him to join their organisation. The appellant was too scared to star there due to its "terrorist problem" and at that point decided he was not safe anywhere in Turkey so he had to leave. He regretted saying that he had stayed at home for a month, then gone to "the village" and then the UK because this was not what happened. The appellant claims to be "really scared" of returning there believing the men, Ahmet and Mikhail - who should have been put in prison, would want to kill him.

20. At the hearing I indicated that it appeared to the Tribunal that the Immigration Judge had not set the adverse credibility findings in her decision against the background evidence to the extent which was desirable. I have now had an opportunity to undertake that task following the hearing and will set out my conclusions below.

Conclusions

21. I considered the other main ground of criticism of the decision of the Immigration Judge, namely that she had failed to attach proper weight to the fact that the appellant complained of suffering from "psychological stress" at the time of his interview. This was said to explain a number of the discrepancies which were identified by her. I considered this to be a convenient explanation for the numerous inconsistencies which she found and noted the absence of any medical evidence to support his alleged "psychological stress". Furthermore, it seems to me immaterial whether the appellant had arrived in the UK two and a half weeks or one month prior to the interview. The fact was that there was a significant time gap between the appellant's arrival into the UK and the interview and the Immigration Judge was entitled to reach the view that his need to recover from his journey to the UK was sufficient explanation for the discrepancies in his account in interview. The Immigration Judge found the appellant to be an unreliable and inconsistent witness and that was a finding she was entitled to come to on the evidence. No medical evidence was placed

before the FtT. As I indicated at the hearing, I am not going to go behind the fact-findings of the Immigration Judge.

22. I have reviewed the objective evidence in the appellant's bundle that blood feuds may last for many years and do not necessarily come to an end simply by the elapse of time. However, having reviewed that evidence and set it against the Immigration Judge's findings I note that those findings include an outright rejection of a number of the documents that have been produced in support of the appeal. The Immigration Judge appears to me to have carefully considered the documentary evidence at paragraphs 26 and 27 but for the comprehensive and careful reasons she gave there rejected that evidence.
23. The evidence of a shooting in 2012 was found to be incredible and inconsistent at paragraph 25. It was noted by the Immigration Judge that the police had in fact detained the appellant's attackers (see paragraph 25) although the appellant later said the police "did nothing to help Kurds". There was simply no cogent evidence that the appellant had recently become involved in the incidents he described other than the appellant's own oral evidence which was not cogent for the reasons the Immigration Judge gave.
24. The appellant faces the additional difficulty that the Immigration Judge had rejected the appellant's evidence about having been tracked down to Istanbul and the Immigration Judge did not accept that there was not an internal flight alternative to his claim for international protection. This would make the errors of law identified, even if they were correct, immaterial. The appellant had not shown why the appellant could not safely relocate to another part of Turkey therefore. This would include Istanbul, an international city of millions, but, as it was put to the appellant in interview (at question 147) there may also be other areas of Turkey well away from his home area where he would not be known or discoverable by Ahmet and Mikhail. The Immigration Judge's findings here have not been effectively challenged on this and are not even raised in the grounds. There is no application to amend the grounds and as Judge Lindsley pointed out, this would be fatal to the assertion that the Immigration Judge had made material errors of law. The Immigration Judge gave careful and sufficient reasons for this aspect of the decision as others have done. I am satisfied that she did not omit to deal with any important aspects of the case that is material to her decision.

My Decision

25. I find that there was no material error of law in the decision of the FtT. That decision therefore stands. Accordingly, the respondent's decision to refuse the appellant asylum or humanitarian protection and to decide to find that the appellant had not engaged rights under the ECHR which have been violated stands.

26. There is no challenge to the decision not to make an anonymity direction or a fee award in this case.

Signed

Date

Deputy Upper Tribunal Judge Hanbury