



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/00525/2013

THE IMMIGRATION ACTS

Heard at Field House
On 11 February 2014

Determination Promulgated
On 27 February 2014

Before

UPPER TRIBUNAL JUDGE PINKERTON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

M E

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr A Melvin

For the Respondent: Mr P Jorro

DETERMINATION AND REASONS

1. For ease of reference the parties are referred to hereafter as they were in the First-tier Tribunal so that M E is the appellant and the Secretary of State for the Home Department is the respondent.
2. The appellant appealed the decision of the respondent to refuse to revoke a deportation order dated 1 March 2013 and the appeal was heard by a panel. In a determination promulgated on 15 November 2013 the appeal was allowed on human rights grounds under Article 3 ECHR. An anonymity direction was made because

the case raises the issues of possible detriment to the appellant were he eventually to find himself returned to his country of nationality. Although I was not addressed on the matter of anonymity I see no reason to depart from the previous direction such that anonymity for this appellant continues.

3. The respondent sought permission to appeal the decision. On a renewed application to the Upper Tribunal it was found arguable that the First-tier Tribunal may have made an error of law in failing to give adequate reasons for its findings on material matters. That in turn raises arguable issues as to whether the panel was entitled in law to reach the conclusions that it did for the reasons given. The grounds further raise arguable issues as to procedural fairness that in the circumstances persuaded the Upper Tribunal Judge that all the grounds may be argued.
4. Although not setting out the entire appellant's immigration history it is apparent that his previous claims for asylum had been rejected as had his claim under Article 8 ECHR. The panel at paragraph 9 of the determination recorded that at the hearing the nature of the issues changed substantially. Counsel on behalf of the appellant did not seek to rely on Article 8 but in the light of an expert report from Sheri J Laizer "author and Middle East specialist" counsel argued that a new issue that had never been considered was now raised. This issue was the significance of the appellant's conviction as a matter relevant to his risk on return combined with his previously accepted membership of HADEP. Those factors, it was submitted, would give rise to a real risk of treatment contrary to Article 3 and, in particular, torture on return to Turkey. The appeal proceeded thereafter by way of submissions solely on the basis of the Article 3 claim.
5. It is argued that the respondent should have been given the opportunity to review her decision in light of the new issue raised. The findings of the report were not before the respondent when the decision was made and, whilst the Tribunal is entitled to consider evidence at appeal, given the severity of the appellant's criminality it would have been "in the interests of equity" to allow the respondent the opportunity to consider whether her decision may have constituted a breach under the ECHR in light of the new evidence produced.
6. I note that there was no request for an adjournment to enable the respondent the opportunity to consider her position again regarding the Article 3 issue. It is reasonable to assume therefore that the respondent's representative was not taken by surprise as she did not deem it appropriate or necessary to seek an adjournment.
7. I would need a great deal of persuasion by way of cogent argument that the panel should have raised the matter of an adjournment of its own volition. This is not a case that so obviously required an adjournment in all the circumstances. The respondent was properly represented and the representative would have been entirely familiar, or should have been entirely familiar, with all the history of this appellant and his background circumstances. Furthermore, one course open to the respondent would have been for the decision appealed against to be withdrawn.

8. The panel found the expert report very persuasive in showing a real risk to the appellant of treatment contrary to Article 3 if he were to be returned to Turkey. The representative for the respondent in her submissions as recorded at paragraph 12 of the determination took issue with many of the matters raised in the report. Nothing revealed in the determination shows that there was a total inequality of representation such that is suggestive of unfairness to either party and so I find that there is nothing in the procedural unfairness point that has been raised.
9. The panel was referred to and considered the country guidance case of **IK (Turkey) CG [2004] UKIAT 312**, the unreported determination of the IAT in the case of **Eris** determined in 2004, and the expert evidence of Sheri J Laizer. As to the unreported determination permission was granted in accordance with the Practice Direction for considering citation of unreported determinations and was found by the panel to be of assistance. The reason given was that the respondent sought to attack the veracity and weight of the expert evidence of Sheri J Laizer. The case of **Eris** had a similar factual scenario and the decision cited expert evidence from Dr Mark Galeotti who is said in that determination to be a highly respected expert whose expertise was not challenged at that time.
10. As to the manner in which the panel considered the evidence and reasoned its findings and conclusions the submissions of the respondent both in the grounds seeking permission to appeal and in submissions by Mr Melvin before me amount to little more or less than argument. This is a very thorough determination. The panel acknowledged that the appellant's offence was very serious (he received a long prison sentence) and the panel was entitled to rely heavily on Sheri J Laizer's report supported as it is by the (albeit now somewhat old) evidence of Dr Galeotti in the case of **Eris**. The panel found that there was a consensus between expert and objective material which indicated that the Turkish authorities would be well aware of the appellant's background and involvement in organised crime in the UK and his conviction for drug trafficking. They give their reasons for coming to that conclusion which are wholly rational and available to them on the evidence.
11. In all the circumstances I can find no material error of law by the panel either in its approach or its conclusions.

Decision

12. **The decision of the panel that the appeal is allowed on human rights grounds under Article 3 therefore stands.**
13. **The anonymity direction made by the First-tier Tribunal continues under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 for the reason given in paragraph 2 above.**

Signed

Date

Upper Tribunal Judge Pinkerton