

KH
Heard at Field House

HG (Conduct of Previous
Solicitor - Procedure) Turkey
[2004] UKIAT 00066

Date: 5 February 2004

IMMIGRATION APPEAL TRIBUNAL

notified:

Date Determination

07 April 2004

Before

:

P R Moulden (Chairman)
M E A Innes
Mr Bremmer

Between

APPELLANT

And

Secretary of State for the Home Department

RESPONDENT

DETERMINATION AND REASONS

1. The appellant is a citizen of Turkey who has been given permission to appeal the determination of an Adjudicator, Mr Richard McKee, dismissing on both Refugee Convention and human rights grounds his appeal against the respondent's decision to refuse to grant asylum and leave to enter the United Kingdom.
2. Ms Y Ruban of Counsel instructed by Kaj Mordi & Co, solicitors, appeared for the appellant. Mr W Saville, a Home Office Presenting Officer, represented the respondent.

3. The appellant entered the United Kingdom illegally on 23 May 2003. He claimed asylum on arrival. The notice containing the decision against which he appeals is dated 13 May 2003. The Adjudicator heard the appeal on 3 July 2003 and permission to appeal was granted on 5 August 2003.
4. The appellant claimed to fear persecution from the authorities in Turkey because of his involvement with HADEP and alleged sympathies with the PKK. He said that he was arrested, detained, brutally beaten and tortured by the police on two occasions, for three days in 1999 and four to five days in 2001. The respondent did not believe the appellant, nor did the Adjudicator. He had not made out the facts on which he sought to rely.
5. The Adjudicator determined the appeal at the preliminary hearing and in the absence of the appellant or any representatives for the parties. The notice of hearing sent to the appellant and both representatives on 13 June 2003 said that the first hearing would be on Wednesday 2 July 2003 but, if the appeal was not determined on that day, there would be a full hearing on 31 July 2003. The appellant or his representatives were instructed to complete and return the form of reply. The notice gives the warning "failure to attend the first hearing without a satisfactory explanation or to return the reply to directions will lead to a DETERMINATION OF THE APPEAL IN THE APPELLANT'S ABSENCE AT THE FIRST HEARING."
6. In the grounds of appeal the appellant accepts that the notice of hearing was sent to him and his former solicitors on 14 June 2003. At the hearing before us Counsel submitted that the appellant had not received the notice of hearing. However, when we asked for the evidence to support the submission, she conceded that there was nothing to this effect in the grounds of appeal or the appellant's subsequent witness statement. She modified her submission to say that the position was not clear. We do not agree. In the absence of any clear allegation to this effect, and bearing in mind that the notice of hearing sent to the appellant has not been returned, we find that the appellant did receive it.
7. The grounds erroneously submit that the appeal was determined without consideration of the merits through no fault of the appellant.
8. We can find no merit in the submissions that the Adjudicator should have adopted a different course of action, did not make adequate enquiries and should have contacted the appellant. The Adjudicator caused enquiries to be made,

which are set out in the third paragraph of the determination. Whilst he cannot be criticised for doing this, he was under no obligation to do so. An Adjudicator does not need to pursue the parties or their representatives to find out what they are doing where he or she is satisfied that proper notice of the date, time and place of the hearing has been given.

9. The grounds go on to submit that the appellant was told by his former solicitors that he need not attend the first hearing and was not told until 4 July 2003 that he should look for another solicitor. They wrote to him on 9 July 2003 saying that they would be closing their file. It is submitted that the former solicitors failed to give the appellant adequate proper or timeous advice.

10. The Vice President who granted permission to appeal said,

"The claimant should file a statement forthwith verifying his address and the matters stated in the grounds of appeal. Absent such a statement a successful outcome or remittal should not be assumed as the Adjudicator's approach appears correct."

11. The appellant's bundle submitted for the hearing before us contains a witness statement from him dated 28 January 2004. It is common ground that this says nothing about the circumstances in which he claims to have been let down by his former solicitors and does not address the matters which the Vice President specifically directed should be addressed. Ms Ruban sought to argue that in paragraph 1 of his witness statement the appellant adopted his grounds of appeal to the Tribunal. This is not correct. The only reference to a notice or grounds of appeal is to the notice of appeal to the Adjudicator, not the appeal to the Tribunal. In any event the appellant does not state that these are true.

12. The appellant has not, as would, in the absence of good reasons to the contrary, be good practice where allegations are made about the actions or failures of previous representatives. The new representatives should have communicated the grounds of appeal and any supporting documents to the former representatives and asked them to confirm, deny or comment. This should have been done and the full text of the letter and reply provided for the Tribunal and the other party. His claims might have gained some support if his new solicitors had put in a statement saying when they were first contacted and instructed. They have not done so.

13. The appellant and those now acting for him have had ample warning and opportunity to provide details of the matters

relied on in the grounds of appeal and evidence in support. They have failed to do so and have not provided any explanation.

14. The Adjudicator did not treat the appeal as abandoned or determine it without considering the merits. The determination is brief, but appropriately so. The Adjudicator reached conclusions which were open to him on the evidence.
15. This determination is being reported in relation to paragraphs 8 and 12; what enquiries an Adjudicator should make where there is no attendance by or for the Claimant and good practice where allegations are made against former representatives.
16. We dismiss this appeal.

P R Moulden
Vice President